NO. 80-1511

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

MARY CATHERINE HALVORSEN
Petitioner,

v.

ALBERT (BOYER) HALVORSEN
Respondent.

ON PETITION FOR A WRIT OF MANDAMUS OR IN THE ALTERNATIVE WRIT OF CERTIORARI TO THE COURT OF APPEALS, DIVISION I, STATE OF WASHINGTON, JUDGES JAMES, DURHAM AND RINGOLD

PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE WRIT OF CERTIORARI

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Acting Pro Se

ABCD AT CRAFTSMAN PRESS SEATTLE

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1980

MARY CATHERINE HALVORSEN, Petitioner,	U.S. SUPREME COURT NO. _____
and	WASHINGTON STATE SUPREME COURT NO. 47319-6
ALBERT (BOYER) HALVORSEN, Respondent,	WASHINGTON STATE COURT OF APPEALS, DIVISION I, NO. 7841-1-I
	WASHINGTON STATE, KING COUNTY NO. D-80812
	MOTION FOR LEAVE TO FILE A PETITION FOR WRIT OF MANDAMUS

Comes now, petitioner, Mary Catherine Halvorsen, acting pro se because she is without funds to retain the services of an attorney, and moves for leave to file a Petition for Writ of Mandamus to the Court of Appeals, Division I, State of Washington, Seattle, Washington, Judges James, Durham, and Ringold.

This Motion is based on the fact that petitioner's constitutional rights were denied her because the above-named court refused to pass on the issues of fact and the issues of law in the appeal before them and the Washington State Supreme Court refused to hear the case. No further state remedy is available.

For the above reasons, petitoner begs, prays, and hopes that her Motion will be granted.

Dated this 3rd day of March, 1981.

_____

Mary Catherine Halvorsen

Acting Pro Se

QUESTIONS PRESENTED

This appeal raises four questions.

1. The right of petitioner to have a Writ of Mandamus issued to Division I, Court of Appeals, State of Washington, Judges James, Durham and Ringold, to answer the issues of fact and issues of law raised on appeal to it because by refusing to do so, petitioner is denied her constitutional rights of due process and equal protection.

2. The right of appellant, as a matter of right, a right under the old Writs of Error, to have the United States Supreme Court review her case. The Writs of Error were abolished but the right was retained and state court decisions were to be allowed review in the same form as Writs of Error.

3. The lack of jurisdiction of the Superior Court, King County, State of Washington to:

a. take from petitioner property located in the State of Alaska,

b. deny petitioner her rights under an Alaska lease where one party is a corporation in Alaska, the other party residents of the State of Washington when the lease was to be observed in accordance with the laws of Alaska,

resulting in the taking of property without due process of law in violation of the fourteenth amendment to the United States Constitution.

4. The unconstitutionality of Washington State "No-Fault" Divorce Laws because one party can be awarded $4,000,000 and the other $50,000 as fair, just and equitable thereby denying equal protection under the law in violation of the Fourteenth Amendment to the United States Constitution.

LIST OF PARTIES

Petitioner is Mary Catherine Halvorsen and Respondent is Albert (Boyer) Halvorsen. If Writ of Mandamus is issued, the Judges are Judges James, Durham and Ringold of Division I, Court of Appeals, State of Washington to address issues of law and issues of fact raised on appeal by assignment of error because of opinion of Judge Jack Scholfield, King County Superior Court, Seattle, Washington.

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ON PETITION FOR A WRIT OF MANDAMUS OR IN THE ALTERNATIVE WRIT OF CERTIORARI ISSUE TO THE COURT OF APPEALS, DIVISION I, STATE OF WASHINGTON, JUDGES JAMES, DURHAM AND RINGOLD

PETITION FOR WRIT OF MANDAMUS OR CERTIORARI

I.

OPINIONS OF COURTS BELOW

King County Superior Court, State of Washington, Case No. D-80812, entered its opinion February 23, 1978, awarding

$4,000,000 worth of assets to respondent and $50,000 to petitioner as fair, just and equitable. Opinion of the Court of Appeals, Division I, State of Washington, (unreported Case No. 7841-1-I) was handed down July 14, 1980. This court of appeals affirmed the Superior Court's Opinion without answering or addressing the issues of fact and issues of law raised by assignment of error in the appeal to it. Copies of these opinions are attached as Appendix A hereto.

II.

GROUNDS FOR JURISDICTION

The Court of Appeals, Division I, State of Washington handed down its decision July 14, 1980. A Motion for Reconsideration was filed on August 4, 1980 and denied on August 11, 1980.

A Petition for Discretionary Review by the Washington State Supreme Court was

filed on September 10, 1980 and denied on November 7, 1980. No further state remedy is available.

A Notice of Appeal to the United States Supreme Court was filed on December 7, 1980, copy of which is attached as Appendix B hereto.

An extension for filing the Petition was granted by Justice Rehnquist to and including March 6, 1981, Extension No. A-634, copy of which is attached as Appendix B hereto.

Jurisdiction is invoked pursuant to the statutory provisions of 28 USC 1651 (Writ of Mandamus); 28 USC 1257 (3); 45 Stat. 54,2; 62 Stat. 992, 39.

III.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the "due process clause" and the "equal protection clause"

of the Fourteenth Amendment to the Constitution of the United States, text of which is attached as Appendix C.

The statutory provisions involved are the 28 USC § 1651; 28 USC § 1257 (3), full texts of which are attached as Appendix C hereto. Also involved are the Act of Congress January 31, 1928 c. 14, No. 45 Stat. 54, Section 1 and 2; Act of Congress of June 25, 1948 c. 646, 62 Stat. 992, Section 39, which deal with the Writs of Error. Full text is in Appendix C hereto.

The full texts of all Washington Statutes are in Appendix D.

Revised Code of Washington (hereinafter RCW) 4.04.010 and RCW 5.24.010 are state laws specifically adopting common law and directing the courts to take note of the common law, respectively.

RCW 26.09.030 and RCW 26.09.080 deal with the dissolution and distribution of

property. Basically, either party can allege that a marriage is irretrievably broken, no reason needed, and within ninety days a decree will be entered. A judge will distribute the property in a manner just and equitable. There is no protection under the law at all, much less equal protection.

RCW 26.09.090 and RCW 26.09.100 deal with maintenance, rarely given, and child support, to be awarded in any amount deemed reasonable; thus no guarantee of equal protection and equal justice.

IV.

STATEMENT OF THE CASE

A. Background. The parties were married May 15, 1965. Three children were born of this marriage. The parties separated on a ninety day separation order October 1, 1976. On November 1, 1976, respondent, having moved into King County,

filed for dissolution of marriage under "No-Fault" Divorce Laws, RCW 26.09.030 and RCW 26.09.080, because he did not want to pay tuition to a private school for their child who had auditory dyslexia even though the public school had no program for her and the parties could well afford the tuition. After securing a decree of dissolution very favorable to him wherein he was awarded $4,000,000 worth of property and the wife was awarded $50,000 as fair, just and equitable, he moved back to Kitsap County where the parties had resided since marriage. The decree was entered February 23, 1978 and has been on appeal ever since.

b. Business. At the time of marriage respondent owned two small tugboat companies, each separately incorporated, one in Washington and one in Alaska. Halvorsen Towing, the Washington Corporation, was

engaged in towing logs in the Puget Sound area and was worth approximately $50,000. Boyer Towing, the Alaska Corporation, was engaged in towing logs in the Ketchikan, Alaska area and had one small surplus World War II landing barge towing loggers' equipment to logging camps in the Ketchikan area. This company was worth approximately $400,000, respondent's share worth $307,800.

The two companies were completely separate but respondent was president of both and chairman of the board of both. During the course of the marriage, as a result of the marriage community's direct action, a new business was started; viz., barging freight as a common carrier by Boyer Towing from Puget Sound to Southeast Alaska and, as required of a common carrier, filed its first tariff with the Federal Maritime Commission in 1967. Barging freight as a contract carrier by

Halvorsen Towing from Puget Sound to Alaska began in 1968, confirmed by the company's "Minutes of Directors Meetings", whence its log towing ceased and the character of the company changed. Respondent repeatedly testified that the character of Halvorsen Towing changed completely and its operations had become more inter-related with Boyer Towing. (Verbatim Report of Proceedings, Vol V, p. 1062, line 10.)

Barges, tugs, loading terminals, forklifts, cranes, vans and other equipment were acquired subsequent to date of marriage to date of separation.

At the time of separation, Boyer Towing was worth $2,108,850, an enhancement value of nearly $1,800,000 and Halvorsen Towing was worth between $1,500,000 and $1,800,000, an enhancement value of approximately $1,450,000 to $1,750,000.

Under community property laws of the state of Washington, new business acquired or started after marriage is community property. RCW 26.16.030 defines community property: "Property . . . acquired after marriage by either husband or wife or both, is community property."

Under community property laws of the state of Washington, when separate property increases beyond normal rents, issues and profits, or changes character during the course of the marriage, it is deemed to have done so through the efforts of the community and becomes community and becomes community property. In Greene v. Levinson, 123 Wash. 370, 385, 212 P. 569 (1923) the court found:

> Where one party owned stock and subsequent activities and financial success of the corporation was in no small degree due to the earnings of its capital, but (due) from the daring and keen business ability of the husband in speculative ventures,

> such earnings belong to the community; since the cloak of a corporate name cannot be used to make them separate property.

(Emphasis added.) See also Salisbury v. Meeker, 152 Wash. 146, 277 P. 376 (1929); Friedlander v. Friedlander, 58 Wn.2d 288, 362 P.2d 355 (1961); Pollock v. Pollock, 7 Wn. App. 394, 499 P.2d 231 (1972).

In In re Buchanan's Estate, 89 Wash. 172, 154 P. 129 (1916) the Washington State Supreme Court found that although the property at the time of marriage was separate property, it flourished because of the husband's efforts, thus changing the property into community property.

> James Buchanan was at all times its active manager and one of its principal officers; and while he received a salary, as appears from the books of the company, the growth of its business and the accumulation of its property was manifestly the result of his personal efforts, much more than the result of the amount of capital invested in the beginning . . . He was manifestly more

> than a mere employee for wages or salary. His whole attitude and demeanor towards the business of the company points to his efforts in its management as being more for the purpose of making money as a part owner thereof than as being interested only in receiving wages or salary for his work as an employee.
>
> Gains and profits produced by the personal efforts of Buchanan, though added to in a measure by the original investment, become community property.

The court held that a 20 fold increase in 10 years was beyond the natural increase of rents, issues and profits of separate property; therefore, the property became community property because the increase in value was the result of the personal efforts of the community. The Buchanan case is exactly the same as the case here.

In this case, respondent acted in the same manner as Buchanan. Halvorsen Towing increased over 33 fold in 11-1/2 years and Boyer Towing, over 20 fold.

Considering that Halvorsen Towing from its incorporation in 1959 to date of marriage in 1965 did not increase in value at all, the 33 fold increase could not have been natural rents, issues and profits.

Boyer Towing, since incorporation in 1959 to date of marriage in 1965 increased from $235,000 to $400,000 or $40,000 a year approximately. At the natural rate of increases in 11-1/2 years, it would have been worth $850,000. Thus, its value of $2,108,850 at the time of separation could not have been natural rents, issues and profits.

The trial court failed to characterize the property as community property and the Court of Appeals, Division I, refused to address the issue on appeal.

c. Alaska Property. The parties owned an Alaska terminal (the Northwoods Property), a Ketchikan residence and

recreational property located outside of the state of Washington and located in the state of Alaska. Except for the Northwoods Property, titles to all of these properties were awarded to respondent, although courts in one state cannot directly affect title to property in another state. The Court of Appeals, Division I, refused to address the issue of the lack of jurisdiction resulting in the taking of property without due process of law.

The Northwoods Property, the loading terminal located in Ketchikan, Alaska, was purchased in 1969 by the parties, title taken in both names and at the time of separation, had an appraised value of approximately $600,000. Under Alaska Law, property bought by husband and wife is tenancy in the entirety and cannot be divided. The warranty deed to this property specifically states that this

property is taken as tenants in the entirety (Book 35, page 339, Ketchikan Recording District). Under tenancy in the entirety, feuda indivisibilia operates - the property cannot be alienated by parceling or dividing.

However, the Superior Court of King County, State of Washington, divided the property and distributed the Northwoods Property, Ketchikan, Alaska, one-half to wife burdened with an option given to Boyer Towing, Inc., an Alaska corporation, outside of the trial court's jurisdiction and not a party to the divorce, without consideration given for the option and lacking five of the nine essentials for a valid option. The option was given on the value of the land only, without the value of improvement. The other one-half of the property was not awarded to anyone. The Court of Appeals, Division I, State of

Washington, Judges James, Durham and Ringold, confirmed the option but modified it to include the value of improvements. It refused to address the question of lack of jurisdiction to award such an option which resulted in the taking of property without due process of law.

When the Northwoods Property was purchased, the parties entered into a lease with Boyer Towing, Inc., an Alaska corporation. The lease stated that it was in accordance with the laws of Alaska and called for an adjustment of rent after five years, which adjustment was due in 1974. Rental of this commercial waterfront property which had appreciated in value considerably should have been in the area of $3,000 per month in 1974 rather than $1,325 established in 1969. By 1976, rental should have been about $5,000.

Respondent testified: "A fair rental may break the company." (VRP Vol. IV, P. 964, R. 11). Thus, no adjustment in the rent was ever made (Boyer Towing retaining the rent money to build a tugboat) and the trial court prohibited petitioner from seeking an adjustment in the rent. No reason for this was given, nor was any basis in law stated. The Court of Appeals, Division I, state of Washington, refused to address or answer the issue of lack of jurisdiction to so prohibit on appeal.

d. Washington Property. At the time of marriage, the respondent owned property located in Kitsap County which was in two separate tax lots although the property was considered one since it adjoined. The parties, after marriage, from the community property bank account, paid for the construction of a new home. All money,

separate and community, was deposited in this bank account. No dispute existed that the money was placed in the community property bank account. Under Washington state community property laws, when separate money is comingled with community, it becomes community money. ("Income derived from husband's separate property became 'community property' when comingled with community funds." Jones v. Davis, 15 Wn.2d 567, 131 P.2d 433 (1942).) Unless separate income is placed in a segregated account, it is comingled. The trial court itself said:

> As I recall the evidence, as his income came in from separate sources he didn't derail it off into a separate account or deal with it separately. It all went into the bank account, on which they drew for family expenses of every kind and character whatsoever.

(VRP Vol. I, Feb. 15, 1978, P. 132).

Reply: Comingled (Id.)

The trial court nevertheless ignored the laws of the state of Washington and found that the husband's separate money went to build the house with the community having a right of reimbursement of $50,000-$25,000 to petitioner and $25,000 to respondent. The figure $50,000 was never explained nor based on any testimony. The property was found to have a value of $40,000 in 1965 at the time of marriage (including a ten acre tract across the road) and to have a value of $130,000 without the ten acre tract at separation in 1976. The house was found to be separate property of respondent by the trial court. In the state of Washington, the enhancement in value is community property. The character of the enhancement in value of the property was never found by any court, the court of appeals, refusing to address the issue and address the issue that the

trial court failed to address the issue. The court of appeals refused to address the issue of whether the house was community property.

e. Fair, just and equitable. The trial court awarded $4,000,000 worth of assets to the respondent and $50,000 to petitioner as meeting the jsut and equitable test under "No-Fault" Divorce Laws. The Court of Appeals, Division I, faced with the issue of fair, just and equitable, refused to address the issue, thereby denying appellant of equal protection under the law.

V.

ARGUMENT FOR GRANTING WRIT OF MANDAMUS IN THE ALTERNATIVE WRIT OF CERTIORARI

1. Writ of Mandamus

A Writ of Mandamus directing the court to do some act is an extraordinary remedy and is properly issued only when the lower

court clearly acts in excess of its jurisdiction, abuses its jurisdiction or refuses to exercise it. (See United States v. Hester, 325 F.2d 654 (9th Cir. 1963); Frost v. Yankwich, 254 F.2d 633 (9th Cir. 1958).) In addition, a state court cannot deprive a litigant of a federal right by omitting to pass upon basic questions of fact. (See Brooklyn Savings Bank v. O'Neil, 324 U.S. 697, 703 (1945); Merchants' National Bank v. Richmond, 256 U.S. 635, 638 (1921).)

The trial court distributed property located in another state; exercised jurisdiction over an Alaska lease, granted an invalid option to an Alaska corporation not under its jurisdiction and not a party to the action; failed to address the issues of community property; mischaracterized the Bainbridge Residence and failed to characterize the enhancement in value of it;

violated the equal protection clause of the Fourteenth Amendment to the United States Constitution by awarding community property assets of approximately $4,000,000 to respondent and $50,000 to petitioner as fair, just and equitable.

By assignment of error, the Court of Appeals, Division I, Judges James, Durham and Ringold, was faced with the lack of jurisdiction of the property in another state; lack of jurisdiction over the Alaska lease; lack of jurisdiction to award the invalid option to a third party, an out-of-state corporation, and not a party to the action (all due process issues); the community property issues; the Bainbridge Residence issue; and the fair, just and equitable questions (all equal protection questions). It did not address the issues of fact or the issues of law raised. The court of appeals affirmed the trial court's

doings without stating any grounds whatsoever although Washington State law RCW 2.06.040 requires just that:

> The court shall sit in panels of three judges and decisions shall be rendered by not less than a majority of the panel. In the determination of causes all decisions of the court shall be given in writing and the grounds shall be stated.

(Emphasis added.)

The Washington State Supreme Court denied petition for Discretionary Review, thereby refusing to hear the case. No further state remedy exists.

When, in the past, the State of Washington has acted in this manner, the Supreme Court said:

> While in ordinary cases, we are bound by the findings of the state court of last resort respecting matters of fact it is hardly necessary to say that that court cannot by omitting to pass upon the basic question of fact, deprive a litigant of the benefit of a Federal right, any more than it could do so by making findings that were wholly without support in the evidence.

(Carlson v. State of Washington on the Relation of Curtiss, 234 U.S. 103, 106 (1914).)

By failing to answer or address the issues, appellant is deprived of her constitutional rights of due process and equal protection and her right of appeal.

2. Writ of Error as a Matter of Right.

A writ of error was a writ of right at the common law, and as a general rule, could be prosecuted as a matter of right in all civil cases. Washington statute RCW 4.04.010 provides that common law shall be the rule of decision in this state. Washington statute RCW 5.24.010 specifically directs the courts to take note of the common law.

By act of January 31, 1928, Section 1, the Writs of Error were abolished but the relief was obtainable by appeal. Section 2 provided that review of judgments

of state courts of last resort would be allowed in the same form as now provided by the Writs of Error. Section 1 was repealed but not Section 2. However, in repealing Section 1, the law provided that all rights were preserved.

Kentucky v. Powers, 26 S. Ct. 387, 201 U.S. 1, 50 L. Ed. 635, 5 Ann. Cas. 692 (1906) states:

> The federal Supreme Court has jurisdiction upon writ of error to re-examine the final judgment of a subordinate state court denying a federal right specially set up or claimed, if, under the local law, that court is the highest court of the state entitled to pass upon such claim of federal right and
>
> This must be so, else it will be in the power of a state to so regulate the jurisdiction of its courts as to prevent this court from protecting rights secured by the Constitution, and improperly denied in a subordinate court, although specially set up and claimed.

(See also Norfolk & Western Ry. v. Conley, Att. Gen'l of the State of Va., 236 U.S.

605, 610 (1915); Oregon R.R. & N. Co. v. Fairchild, 224 U.S. 510, 528 (1912); Wood v. Chesborough 228 U.S. 672, 678 (1913); Creswell v. Knights of Pythias, 225 U.S. 246, 261 (1912); Cedar Rapids Gas Co. v. Cedar Rapids, 223 U.S. 655, 668 (1912); Southern Pacific Co. v. Schuyler 227 U.S. 601, 602, 611 (1913); Kansas City So. Ry. v. C. H. Albers Commission Co., 223 U.S. 573 (1912).)

Under the rights preserved from the old Writs of Error, petitioner has a right to have the Court act.

Chief Justice John Marshall in Fisher v. Cockrell, 30 U.S. 248 (1831), set the standard:

> course of the judicial department is marked out by law. We must tread the direct and narrow path prescribed for us. As this court has never grasped at ungranted jurisdiction, so it never will, we trust, shrink from that which is conferred upon it.

3. Lack of Jurisdiction of the Trial Court to Affect Title to Property Outside of the State, and to Affect an Out of State Lease Contract.

a. Alaska Property. The State of Washington Superior Court of King County lacked jurisdiction to distribute property located in another state.

Taylor v. Taylor, 192 Cal. 71, 218 P. 756, 758, 51 A.L.R. 1074 (1923), states:

> That courts of one state cannot make a decree which will operate to change or directly affect the title to real property beyond the territorial limits of its jurisdiction must be conceded. The doctrine that a court, not having jurisdiction of the res, cannot affect it by its decree, is firmly established.

The State of Washington, in previous proceedings, recognized this. In Brown v. Brown 46 Wn.2d 281, 370 P.2d 850 (1955), a case often cited as controlling, the court said in plain English:

> The rule is well established that in divorce proceedings courts of one

> state cannot directly affect legal title to land situated in another state.

(Emphasis added). (See also Werner v. Werner, 526 P.2d 370, 84 Wn 2d 360, (1974); Schulter v. Schulter, 130 Cal. App. 780, 20 P.2d 723 (1933).)

Again, in another Washington case, Sparkman & McLean Income Fund v. Wald, 10 Wn. App. 765, 520 P.2d 173, 178 (1975), stated:

> The trial court's attempt to directly affect the title to Oregon real property . . . was of no force or effect. Courts of one state cannot directly affect the title to real property beyond that state's territorial limits.

(This case cites Brown v. Brown, supra, as controlling.) One of the Judges in this case was the same Judge James who sat in my case. In the Sparkman case, Judge James took the position that title to real property outside of the state could not be affected by a Washington court. In my case

he did not address the issue but confirmed the lower court's opinion, wherein, title to real property in another state was affected by a Washington court. Of course, the Sparkman case involved taking property from a man. My case involved taking property from a woman.

Miles v. Chinto Mining Company, 21 Wn.2d 902, 156 P.2d 235 (1944), another Washington case, clearly defines jurisdiction. This case concerned parties who agreed by stipulation that Spokane County court would have jurisdiction over the question of title of property located in Stevens County. The court said:

> The parties to an action cannot, by stipulation, confer upon a court a jurisdiction with which it is not vested. . . . parties cannot, by stipulation confer jurisdiction on a superior court to entertain an action affecting title to real estate situated in another county.

(Emphasis added) A court cannot be given a

jurisdiction with which it is not inherently vested either by consent, estoppel, waiver, or stipulation. American Jurisprudence states:

> It is a universal rule of law that parties cannot by consent give a court, as such, jurisdiction of subject matter of which it would otherwise not have jurisdiction. Jurisdiction in this sense cannot be obtained by consent of the parties, waiver or estoppel.

(14 Am. Jur. 380 No. 184.) United States v. Mississippi Valley Barge Line Co., 285 F.2d 381 (8th Cir. 1960) states:

> The litigants cannot establish jurisdiction over subject matter by stipulation, consent or waiver.

Goldstone v. Payne, 94 F.2d 855 (2d Cir. 1938), certiorari denied, 304 U.S. 585, 58 S. Ct. 1057, 82 L. Ed. 1547, pronounced the rule as follows:

> But where a court lacks jurisdiction over the subject matter of a case the defect is not cured by getting personal jurisdiction of the defendant. Such a want of jurisdiction cannot be waived by pleading or any other form of consent - not even going to trial.

(Emphasis added.) When "in personam" jurisdiction applies to the parties before the court, it does not extend to title to property in another state, except in three instances: specific performance, trustee to reconvey property to legal owner, and fraud. Divorce is not included.

The original case which established "in personam" jurisdiction was Penn v. Lord Baltimore, English Reports, Vol. 27, p. 1132 (1750). This case stated clearly that the suit was for specific performance and had title to land been involved, the court would not have had jurisdiction.

Smith v. Fletcher, 102 Wash. 218, 220, 173 P. 19 (1918), citing Penn v. Lord Baltimore, supra, as controlling, and while recognizing that personal jurisdiction extends to conveyance of land in cases of fraud, trusts or specific performance, states: "It is a universal rule that the

courts of one state cannot pass judgment on the title to land in another state."

Donaldson v. Greenwood, 40 Wn.2d 238, 250-251, 242, P.2d 1038 (1952), states: "An interest in land can be transferred by operation of law only by the law of the state where the land is."

The property in Alaska was tenancy in the entirety while property in Washington owned by husband and wife is community property. Alaska is not a community property state while Washington is. Tenancy in the entirety cannot be divided. The law of Alaska prevails and not Washington. Clearly the trial court lacked jurisdiction over the title of the property as well as the property itself located outside of the state of Washington; yet the trial court distributed all of the parties' property in Alaska with title to respondent except the Northwoods Property. The

Northwoods Property was held as tenancy in the entirety and not divisible but the trial court divided it, awarding one-half to wife burdened with an option in favor of Boyer Towing, an Alaska Corporation, a third party not a party to the action and not under the court's jurisdiction. The trial court lacked jurisdiction to grant such an option but even so the option it did grant was invalid because it lacked separate consideration and five of the nine essentials of a valid lease, the lack of any one of which is enough to invalidate a valid option. Petitioner stated she did not wish to sell but under the option she had no choice.

Such distribution of Alaska properties resulted in the taking of property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

b. Alaska Lease. The trial court lacked jurisdiction to deny petitioner her rights under an Alaska lease to seek an increase in rentals due her. One party to the lease was an Alaska Corporation; the lease stated that it was in accordance with the laws of Alaska. The lease of land situated in another state is a contract of another state. Smith v. Smith, 535 P.2d 1109, 1115-1116 (Hawaii 1975), was a case concerning parties residents of California who obtained a divorce in California. The California court expressly stated that although it had personal jurisdiction, it lacked jurisdiction to decide claims to leasehold property located in Hawaii. The husband sued in circuit court but the wife challenged jurisdiction and the circuit court ruled the case had to be decided in an Hawaiian court. The Hawaiian court held that the California court could not award future rents of Hawaiian property.

The land and lease of land in another state are incapable of being constitutionally applied to Washington courts. Aetna Life Ins. Co. v. Dunken, 266 U.S. 389, 399 (1924), concerned a Tennessee contract, the party to which was a resident of Texas. He sued under Texas law. The Supreme Court said:

> The contract contained in the original policy was a Tennessee Contract. The Texas statute was incapable of being constitutionally applied to it since the effect of such application would be to regulate business outside the State of Texas and control contracts made by citizens of other states in disregard of their laws.

A Texas statute cannot constitutionally be applied to a Tennessee court.

Washington State "No-Fault" Divorce Laws cannot be applied to an Alaska lease contract by a Washington Court. The taking of property under such a guise results in the taking of property without due process

of law in violation of the Fourteenth Amendment to the United States Constitution.

4. Washington State No-Fault Divorce Laws are Unconstitutional.

Washington State "No-Fault" Divorce Laws are attached as Appendix D hereto. These laws do not contain any protection for women. Men can walk into court, declare the marriage irretrievably broken without reason, and be granted a decree in ninety days. The judge will distribute the property in a manner that is fair, just, and equitable. No safeguards for her property are given.

Men can shop around for the county that will give them the best deal because there are no uniform standards in the law; no provision for child support other than what the judge feels like awarding; no standard of distribution of property. The women are at the mercy of the whim of an

all-powerful judge who can do as he pleases. The is not law; this is tyranny.

As in the case here, the judge can award $4,000,000 worth of assets to the husband and $50,000 to the wife as fair, just and equitable. $6,000 a month community property income was awarded to husband, no maintenance to wife, and $300 per child per month child support.

Such an award is contrary to the guarantee of equal protection under the law by the Fourteenth Amendment, and because such equal protection is missing from the Washington statutes, these laws are unconstitutional.

VI.

CONCLUSION

For the above stated reasons, petitioner prays that a Writ of Mandamus or in the alternative, a Writ of Certiorari issue to the Court of Appeals, Division I, State

of Washington, Seattle, Washington, Judges James, Durham and Ringold.

Respectfully submitted,

Mary Catherine Halvorsen

Pro Se

APPENDIX A

FILE
July 14, 1980
Chief Judge

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

In re the Marriage of	)	
MARY CATHERINE HALVORSEN,	)	NO. 7841-1-1
Appellant,	)	
and	)	DIVISION ONE
ALBERT (BOYER) HALVORSEN,	)	
Respondent.	)	FILED
	)	JUL 14 1980

RINGOLD, J. -- The wife appeals from a judgment and decree dissolving her marriage to Boyer Halvorsen.

She challenges the property division, award of child support and the failure of the trial court to award her maintenance and attorneys fees. We modify the provision of the decree relating to the "Northwoods Terminal Property" and affirm the judgment and decree in all other respects.

The trial of this action ran from December 20, 1977, through January 13, 1978. The verbatim report of proceedings

comprises seven volumes, meticulously summarized in 38 pages of detailed findings of fact and followed by 10 pages of carefully drafted conclusions of law.

Basically the issues raised by the appellant are factual and she is attempting to have this court retry the case. We have reviewed the entire record, including the trial judge's carefully considered 23-page oral decision and conclude that all of the findings of fact are supported by substantial evidence and will not be disturbed on appeal.

The able trial judge did not abuse his discretion in the award of child support and in the disallowance of maintenance and attorneys fees to the wife. The trial court has wide discretion and a reviewing court will not substitute its judgment as what constitutes proper child support and maintenance where the trial court fixed the

award considering the applicable criteria from RCW 26.09.090 and .100. In re Marriage of Nicholson, 17 Wn. App. 110, 561 P.2d 1116 (1977). Similarly, the trial court properly considered the standards articulated in numerous cases such as Robertson v. Robertson, 19 Wn. App. 425, 575 P.2d 1092 (1978); In re Harshman, 18 Wn. App. 116, 567 P.2d 667 (1977); and In re Marriage of Young, 18 Wn. App. 462, 569 P.2d 70 (1977). There is no abuse of discretion demonstrated.

In making the division of the property between the parties the trial judge sought to divide the community property equally. Except as to the Northwoods Terminal Property, the trial court properly concluded the respective interests of the community and the separate estate of each.

NORTHWOODS TERMINAL PROPERTY

The trial court made the following finding of fact and conclusion of law with respect to the Northwoods Terminal Property:

> 28. Properties were acquired jointly by the parties after the marriage as follows:
>
> . . . .
>
> c. In early 1969, the parties purchased a waterfront property in Ketchikan (the "Northwoods Terminal Property" herein) for the purpose of providing badly needed loading and distribution facilities for Boyer Towing. The property was placed in use by Boyer Towing even before the purchase was consummated and rent of $1,325 per month was paid to the parties. The rental arrangement was formalized by a written lease which commenced as of September 1, 1969, and terminates on August 31, 1979, at a rental of $1,325 per month which has been paid quarterly. The lease provided that rentals would be renegotiated at the end of five (5) years and included an arbitration provision in the event the parties could not agree on a revised rental figure. No action was taken at the end of five (5) years to increase the rental payments. When purchased, the property was relatively unimproved, containing an abandoned sawmill which in its then condition was not useable as a building.

Boyer Towing made and paid for substantial improvements to the building to make it useful as a warehouse. Such improvements included the replacement of much of the underlying pilings, construction of a floor, closing in of the ends of the building, repairing the roof, painting the building, and other improvements. As so improved, the warehouse has a stipulated fair market value of $38,088. In addition to the foregoing improvements to the warehouse, Boyer Towing made and paid for other substantial improvements to the overall property. These included filling and grading; the installation of a small office building having a stipulated fair market value of $9,752; the installation of large storage tanks and associated concrete foundation, holding tank, walkways, piping and fence, having a stipulated fair market value of $25,882; the construction of a dock having a stipulated fair market value of $25,245; and the construction of a loading ramp having a stipulated fair market value of $32,072. The stipulated fair market value of the land alone as filled and graded but without the other improvements described above amounts to $469,812. All of the land and improvements are essential to the continued operation of Boyer Towing.

Conclusion of law No. 8 reads:

The community's interests in the Northwoods Terminal Property is

> limited to the real estate which should be considered community property for purposes of this proceeding. Petitioner has failed to establish a separate property claim or interest in the Northwoods Terminal Property entitling her to a greater ownership interest therein than Respondent. She has also failed to establish any legal or equitable basis for compensating her or the community for improvement to the property made and paid for by Boyer Towing. Those improvements have not reverted to the community and there is no indication that such a revision will take place in the foreseeable future.

The wife contends that inasmuch as the Northwoods Terminal real estate has always been community property, the improvements made by Boyer Towing, Inc., became part of the realty and therefore inured to the community estate. The respondent husband contends that most of the improvements are removable and therefore are not fixtures. Should they be deemed fixtures, he argues, they are trade fixtures and properly owned by the tenant Boyer Towing, Inc. Proper characterization of the improvements as

separate or community property turns, then, upon a determination whether the improvements are fixtures, or trade fixtures.

Nowhere in the findings or the oral decision does the court indicate his decision whether the improvements are fixtures or his determination of the separate or community character of the improvements. From the court's statement that the petitioner "has . . . failed to establish any legal or equitable basis for compensating her or the community for improvements" we may infer that the trial court conceived the character of the improvements as separate property. Because "[in] making the property division, the court must bear in mind the correct community or separate property status of the property to be divided," and because "if it fails to do so, its division of the property constitutes reversible error," we examine the character of that property.

Pollock v. Pollock, 7 Wn. App. 394, 399, 499 P.2d 231 (1972); see also Blood v. Blood, 69 Wn.2d 680, 682, 419 P.2d 1006 (1966).

Our analysis starts with the restatement of the common law principle in Lipsett Steel Prod., Inc. v. King County, 67 Wn.2d 650, 652, 409 P.2d 475 (1965):

> The true criterion of a fixture is the united application of these requisites: (1) Actual annexation to the realty, or something appurtenant thereto; (2) application to the use or purpose to which that part of the realty with which it is connected is appropriated; and (3) the intention of the party making the annexation to make a permanent accession to the freehold. . . .

See also Department of Revenue v. Boeing, 85 Wn.2d 663, 667, 538 P.2d 505 (1975).

As indicated by a noted authority:

> Fixtures may be said to be in the twilight zone between real and personal property. Personal property, in order to lose its character as a chattel and become a fixture, must be annexed to the realty either actually or constructively, must be appropriated to the use of that part

> of the realty with which it is connected and must be intended as a permanent accession to the freehold.

I.G. Thompson, Real Property, § 55 at 181-82 (1980). There is no question the improvements are actually annexed to the realty and that the improvements are appropriated to the use of that part of the realty with which it is connected. The remaining question is the intention of the annexor:

> In determining whether a chattel which has been annexed to the freehold is a trade fixture or a part of the realty, the cardinal inquiry is into the intent of party making the annexation. Often there is difficulty in determining the intent, but, whatever may be the legal relation of the parties between whom the controversy is waged, when the intent is discovered it is generally controlling. The intent . . . to be inferred, when not determined by an express agreement, from the nature of the article affixed, the relation and situation to the freehold of the party making the annexation, the manner of the annexation, and the purpose for which it is made.

Ballard v. Alaska Theatre Co., 93 Wash. 655, 662-63, 161 P. 478 (1916).

To determine intent, we look to the lease document by means of which the marital community leased the realty to Boyer Towing, Inc. Relevant portions state:

> The Lessee shall have and is hereby granted the right to improve the said real property in any manner not unlawful, providing such improvements shall not depreciate the value of the said real property.
>
> . . .
>
> . . . Lessee will at all times . . . preserve said premises in as good repair as said premesis now are or may hereafter be put to, and all repairs shall be at Lessee's sole cost and expense. Lessee will quit and surrender the said premises without notice, and in a neat and clean condition, and will deliver up all keys belonging to said premises to the Lessor or Lessor's agents at the termination of this lease.
>
> . . .
>
> The Lessee shall cause to be insured at not less than ninety (90%) percent of total value any improvements placed on said property, and in the event of damage by fire to any structure or structures so insured, the Lessor shall either restore such structure or structures to the condition in which they were

> prior to the time of said fire, or the amount of said insurance shall be paid over to the Lessor.[1] The Lessee shall be responsible for the full rental of the real property as herein referred to, whether or not any improvements placed on said property by the Lessee be damaged or destroyed by fire.

From the above provisions it is clear that the respondent, who in this transaction acted both as agent of the marital community and as president of Boyer Towing, Inc., anticipated that Boyer Towing would make improvement to the realty. The clause regarding surrender of keys indicates that the respondent foresaw the need to enclose

---

[1] Specification of the lessor rather than the lessee here seems to be an error. If the lessee is to buy the insurance it appears that the lessee is the loss payee of the insurance. That being so, it would seem that the lessee, not the lessor, would be the proper party to have the choice of rebuilding or paying the proceeds to the lessor. If, however, the lessor is the loss payee, the inference is even more cogent that the intent was to have the improvements accrue to the land.

and make lockable the structures on the realty, which were not fully enclosed at the time of the commencement of the lease term. Surrender of the keys to the lessor signifies the lessee's intent that the building as improved would stay with the realty, not be removed at the end of the lease term. Finally, the insurance clause requiring the insurance proceeds to be paid over to the lessor should the destroyed improvements not be rebuilt by the lessor (see footnote 1), demonstrably indicates that the improvements contemplated were to be considered a part of the realty. We conclude that the lease document clearly manifests an intent that the improvements be deemed permanently affixed to the realty, that they are not trade fixtures, and that, therefore, they are community property.

The trial court erred in failing to ascribe the value of the repairs and

improvements to the community. Pollock v. Pollock, supra. The petitioner's interest in the Northwoods Terminal Property must be increased to include one-half the value of the improvements.

The decree provides an option "to either Boyer Towing or respondent husband to elect on or before July 30, 1979, to pay petitioner wife the sum of $234,906 for her interest in the Northwoods Terminal Property." We modify the decree to increase the wife's interest therein to $300,925, and modify the right provided to Boyer Towing and to respondent husband to purchase her interest for the sum of $300,925. We further modify the decree by amending the date, July 30, 1979, in the decree, to read: "The end of business hours 30 days after the mandate pursuant to RAP 12.5(b) is issued by the State Court of Appeals." The decree is affirmed in all other respects.

This case has entailed extensive litigation, an extraordinary number of motions and counsel fees now exceeding $100,000. The respondent husband requested that this court impose attorneys' fees upon the petitioner as sanctions under RAP 10.7. The petitioner's brief is 126 pages long, with a 46-page appendix. The length of petitioner's brief violates RAP 10.4(b). Furthermore, the brief violates RAP 10.3(a)(3) and RAP 10.3(g). It is difficult to find the claimed errors, issues and arguments in petitioner's brief. The references to the findings are not helpful to determine challenged portions of the findings which are hidden in the labrythine appendix.

We have given serious consideration to the respondent's request for the imposition

of attorneys' fees as sanctions but consider the comment here a sufficient reprimand. Each party shall bear his or her own attorneys' fees and costs incurred in this appeal.

Except as modified here, we affirm.

/s/Ringold, J.

WE CONCUR.

/s/ James, J. /s/Durham-Divelbiss, J.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040.4 IS SO ORDERED.

/s/Keith M. Callow
CHIEF JUDGE

COPY RECEIVED
FEB 25 1978
FERGUSON & BURDELL

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

In Re the Marriage of) MARY CATHERINE HALVORSEN,) Petitioner,) and) ALBERT (BOYER) HALVORSEN,) Respondent.)	NO. D-80812 DECREE OF DISSOLUTION OF MARRIAGE

THIS MATTER having come on regularly for trial commencing December 20, 1977, and continuing thereafter through January 13, 1978; the Petitioner-Wife appearing in person and by her attorneys, William Wesselhoeft and David N. Lombard of Ferguson & Burdell; the Respondent-Husband appearing in person and by his attorneys, Robert J. Frederick of Lane, Powell, Moss & Miller and Gerald Shucklin of Hoof, Shucklin & Harris; Petitioner-Wife having instituted this action for separation and Respondent-Husband having counter petitioned for dissolution, and counsel for

Petitioner-Wife having in his opening statement stated that Petitioner-Wife will not oppose the entry of a Decree of Dissolution; the parties and their respective witnesses having given sworn testimony regarding the material facts of this dissolution proceeding; and the Court having considered said testimony, the file and exhibits herein, the argument and memoranda submitted by counsel, and having viewed the Duwamish properties of the corporations involved in this proceeding and the Bainbridge Island properties, and having rendered a transcribed oral decision, and having heretofore made and entered its Findings of Fact and Conclusions of Law, does, now,

ORDER, ADJUDGE AND DECREE:

1. The marriage of the parties is dissolved.

2. Petitioner is awarded custody of the parties' dependent children and Respondent is awarded the most liberal and extensive visitation rights with the children consistent with practical living arrangements. Unless the parties otherwise agree, such visitation rights shall include the following:

a. Alternate weekends commencing on Friday after school and ending Sunday evening at a reasonable hour to be agreed upon by the parties or, in the absence of such agreement, at 7:00 p.m. Such visitation shall include any holiday that falls on a Friday or Monday of a particular visitation weekend. Respondent shall have the right to pick up or to arrange to have the children picked up at their respective schools on Friday of a normal visitation weekend or Thursday of a visitation weekend where a holiday falls on Friday.

b. Alternate Thanksgiving holidays to include the long Thanksgiving weekend commencing with the 1979 Thanksgiving holiday.

c. Alternate Christmas Days (including Christmas Eves) with the Respondent having the children on Christmas Eve and Christmas Day starting with the 1978 Christmas holiday.

d. One continuous half of the children's Christmas school vacation.

e. The children's school spring vacation.

f. One continuous half of the children's summer school vacations to include specifically the Fourth of July holiday in alternate years commencing with 1979. If the children attend summer camp, the time remaining when they are not in attendance at such camp shall be divided equally with the Respondent's half to be continuous.

g. Such further and additional times as the children may be reasonably available or wish to visit with Respondent including particularly but not limited to those times when Respondent may be at the family home working in the office or working on one of his vessels or maintaining the grounds or working in the garden while the children are at home on days other than during Petitioner's visitation weekends. Respondent shall not initiate any activity with the children during Petitioner's normal visitation weekends but if any contact or activity develops naturally he may proceed with it. Respondent shall not be entitled to exercise rights of visitation with the children under this subparagraph on Sunday of Petitioner's normal visitation weekends.

3. Petitioner shall have the right to live in the family home on the Bainbridge

Residence Property with the parties' children until she no longer maintains the home as her permanent and continuous residence recognizing her right to reasonable business trips and vacations or until none of the parties' children are regularly and continuously living in the home or until the eighteenth birthday of the youngest child of the parties then living, whichever first occurs. Petitioner's said right to live in the family home shall survive the death of Respondent.

a. Petitioner's occupancy and use of the home shall be in a reasonable manner consistent with the manner in which it was used prior to the parties' separation. She shall maintain the interior of the home, including all appliances and fixtures, in good condition and repair at her own expense, reasonable wear and tear expected.

b. Respondent shall pay all reasonable heat, electricity and local service telephone expenses of the family home, the expense of insuring the home, and all real estate taxes assessed against the Bainbridge Residence Property. He shall further maintain the exterior of the family home, including plumbing and wiring services but not appliances, in reasonably good condition and repair, and shall maintain the yard and grounds comprising the Bainbridge Residence Property in a condition commensurate with that in which same was maintained prior to the parties' separation. Respondent or his designated agent shall have reasonable access to the exterior of the family home and to the yard and grounds for the purpose of performing such obligations.

c. Petitioner's right to live in the family home shall include the right to use the yard and grounds comprising the

Bainbridge Residence Property and the driveway leading to the home in a reasonable manner commensurate with its use by herself and the children prior to the parties' separation. Such right shall not include the right of access to or use of the business office in the home and she is enjoined from entering same. Respondent shall cause the existing switch in the office controlling exterior flood lights on the office end of the house to be rewired to provide Petitioner a switch thereto in the residence portions of the home.

4. Both parties shall exert every reasonable effort to maintain free access and unhampered contact between the children and the other party, and to foster a feeling of affection between the children and the other party. Both parties should be responsive and sensitive to the requests and needs of the children regarding visitation and should make every effort to avoid

disputes, conflict and displays of hostility toward the other in the presence of the children. In addition to any other rights of use provided in this Decree, Respondent shall be entitled to use the Bainbridge Residence Property (other than the interior of the house) during any time he is exercising the visitation rights specified in paragraph 3 above and during such other times as he may be exercising visitation rights with all or any of the children with the prior approval of Petitioner. Recognizing that the arrangements with respect to custody, use of the family home and visitation could produce further conflict, this Court shall retain jurisdiction over this proceeding for a period of two years from entry of the Decree for the purpose of providing prompt and easy access by either party to the Court in the event the circumstances require modification of the Decree herein. In the event the circumstances

require modification of the Decree herein, either party shall have the right to bring this matter on for hearing before the Court pursuant to an appropriate petition.

5. Respondent shall provide support for the parties' children as follows:

a. Respondent shall pay Petitioner the sum of $300 per child per month. Such payments shall be made on or before the fifth day of each month, commencing as of February 5, 1978, and should continue on or before the fifth of each month thereafter until Respondent dies or until each child reaches the age of eighteen or marries or becomes emancipated whichever first occurs. In the event of Respondent's death prior to termination of his obligation for support under this subparagraph and Respondent has not otherwise provided for the children's support by Will, Trust or other arrangement, future support payments shall be an obligation of his estate.

b. For so long as he shall be required to pay support for such child under the preceding subparagraph, Respondent shall maintain and name each child as recipient of all privileges extended to dependents under the existing Tongass Timber Trust Plan carried by Respondent's employer or any equivalent policy carried by Respondent or his employer which provides coverage for medical and dental expenses. In addition, Respondent shall pay all medical and dental expenses of the children which are not paid under any such policy or plan carried by Respondent or his employer. In the event of Respondent's death prior to termination of his obligation for support under this subparagraph and Respondent has not otherwise provided for the children's support by Will, Trust or other arrangement, future support payments shall be an obligation of his estate.

c. For so long as he shall be required to pay support for such children under subparagraph a. above, Respondent shall pay directly to the school involved, one-half of the reasonable cost of private education of the children over and above the ordinary costs that would be incurred by such children attending public school. This shall apply to any reasonable expense incurred because the children are attending private schools or because they are attending such schools away from home, or incurring costs attending schools beyond the high school level for a period of five school years past high school which costs Respondent has not otherwise made provision for by Trust, Will or other arrangement. Respondent shall not be obligated for the children's school clothing.

d. For so long as he shall be required to pay support for such children under paragraph a. above, Respondent shall

pay directly to the camp involved the tuition, room and board and all actual and necessary camp related expenses furnished and billed by the camp for two weeks of summer camp for all or any of the children, together with that proportion of necessary air or bus transportation expenses to and from the camp which two weeks bears to the total time attended by the child.

6. Petitioner is awarded as her sole and separate property the following, which is more specifically identified in the Findings of Fact heretofore entered:

a. Her separate property consisting of 100 shares of home; silverware, china-ware and crystal in the home; patent rights to a doll under a design patent applied for in December of 1976; and her personal checking and savings accounts established following the parties' separation.

b. An undivided one-half interest in the real estate included in the Northwoods Terminal Property subject to the following option in favor of Boyer Towing or in favor of Respondent in the event Boyer Towing fails to exercise same:

i. Either Boyer Towing or Respondent has the option to elect on or before July 30, 1979, to pay Petitioner the sum of $234,906 for her interest in the Northwoods Terminal Property and to enter into an agreement setting forth the basis on which such sum will be paid to her. Until that election is made and such written agreement entered into, Petitioner shall receive one-half of the rental income payable by Boyer Towing for use of the Northwoods Terminal Property commencing March 1, 1978. Petitioner shall have no right during the option period to seek or insist upon an increase in existing rentals paid by Boyer Towing for use of the property.

ii. In the event either Boyer Towing or Respondent elects to pay Petitioner $234,906 for her interest in the Northwoods Terminal Property within the time provided above, such sum shall either be paid in full or, unless otherwise agreed, an agreement entered into to pay such sum in equally spaced installments of not less than $58,726.50 in principal commencing with the date of exercise. Under such agreement, payment of the unpaid balance including interest shall be made within two years after the date on which the option is effectively exercised. Interest at 6% per annum shall be paid on the deferred principal balances commencing from the date of exercise of the option.

iii. In the event Boyer Towing or Respondent does not elect to pay Petitioner $234,906 for her interest in the Northwoods Terminal Property and enter into such written agreement by the end of business

hours on July 30, 1979, Petitioner shall remain a joint owner of the Northwoods Terminal Property with Respondent and said option to acquire her interest therein shall terminate on July 30, 1979.

c. The Duwamish Triangle Property.

d. One-half of the principal and interest accumulated in the American Marine Bank savings account.

e. One-half of the principal and interest payable under the American Marine Bank capital note as and when paid.

f. The sum of $94.75 per month from the Alaska Logger's Association pension payments as and when same are paid and received by Respondent.

g. The 1973 Ford LTD automobile and the 1958 Studebaker Golden Hawk automobile.

h. All social security benefits accrued or to which she may be entitled by reason of her employment prior to the parties' marriage.

i. One of the five unoccupied cemetery plots at the Kane Cemetery.

j. One hundred shares of the Milwaukee Railroad common stock.

k. One-half of the community furniture and rugs as provided in paragraph 7.b hereafter.

l. The sum of $25,000 which shall be paid without interest within thirty days after entry of this Decree; and the further sum of $45,907.50 which shall be paid in cash within twelve months after entry of this Decree and shall draw interest at the rate of 8% per annum from the date of the Decree until paid in full.

7. Respondent is awarded as his sole and separate property the following, which is more specifically identified in the Findings of Fact heretofore entered:

a. The Bainbridge Residence Property subject to the restrictions and obligations specified hereinafter and in

paragraph 3 above. Respondent shall have the right to unrestricted and exclusive use of the business office in the family home and the right to unrestricted but reasonable use of and access to the garage adjacent to the office, the parking area in front of the office, the dock and floats, the detached garage and the garden area to the rear of the Bainbridge Residence Property. He shall further have the right to make reasonable use of the yard and grounds comprising the Bainbridge Residence Property only in connection with his maintenance obligations, planting and maintaining of a vegetable garden in its present size and location, use of the detached garage and the boats located therein, and after a period of twelve months following entry of the Decree herein, or, if appealed, after a final decision following such appeal, he may construct or place a residence on the

property in a location reasonably removed from the family home. Respondent's use of the Bainbridge Residence Property shall be exercised in such a manner that it would not unreasonably interfere or conflict with reasonable activities of Petitioner in her occupancy and use of the property.

b. One-half of the community furniture and rugs (to specifically include the large Oriental rug currently in the living room) and all of the community furnishings, appliances, tools and other personal property in the family home subject to the right of Petitioner to have the reasonable use thereof for so long as she continues to occupy the family home. When Petitioner no longer occupies the family home, the community furniture and rugs other than the large Oriental rug should be divided equal to one-half of the value of such rug.

c. All other separate property of Respondent including the Bainbridge Waterfront Lot; the Bainbridge Acreage; the Ross Point Property, the Millers Bay Property; the Ketchikan Office Property; certain furniture, furnishings and personal property located in the family home or on the Bainbridge Residence Property; the Pennsylvania Mutual Life Insurance policy; the 498 shares of common stock in Halvorsen Towing; and the 1,460 shares of common stock in Boyer Towing.

d. The Hunters Bay, Sucquan Bay and Hetta Inlet Properties.

e. The Hoods Canal lot.

f. The one occupied and the four contiguous unoccupied cemetery lots at Kane Cemetery.

g. The Tongass Timber Trust group life, medical and dental insurance.

h. The Alaska Loggers Association pension subject to the obligation to pay

Petitioner the sum of $94.75 per month as and when monthly pension benefits are received by him upon his retirement.

i. The Baugh sailboat subject to the obligation that he retain it at the Bainbridge Residence Property and that it be used primarily for the benefit of the children.

j. One-half of the principal and interest accumulated in the American Marine Bank joint savings account.

k. One-half of the principal and interest payable under the American marine Bank capital note as and when paid.

l. One hundred shares of Milwaukee Railroad stock.

m. All social security benefits accrued or to which he may be entitled by reason of his present and all past employments.

n. All bank accounts on which his name appears as an authorized signator

other than the joint savings account of the parties at the American Marine Bank.

8. Except as otherwise provided in this Decree, any property acquired by either of the parties after October 1, 1976 is hereby declared to be the sole and separate property of the acquiring party.

9. Each party is enjoined from disposing of or otherwise utilizing any of the savings, stock or other investments held in the name of or for the benefit of the parties' children without the prior consent of the other party or Order of this Court.

10. Respondent shall pay and hold Petitioner harmless from any unpaid medical or dental expenses incurred for the parties' children during the separation of the parties and prior to trial herein. Each party shall pay and hold the other harmless from all other debts and obligations incurred by such party regardless of when

incurred. Respondent shall pay directly or through indemnity one-half of the actual capital gains tax liability incurred by Petitioner as a result of exercise of the option and purchase of her interest in the Northwoods Terminal Property as contemplated by paragraph 6.b. of this Decree.

11. Neither party shall be required to pay maintenance to or for the benefit of the other.

12. Each party shall pay and hold the other harmless from all unpaid attorneys and other fees and costs incurred by such party in connection with this proceeding.

13. a. Each party shall cooperate fully with the other to carry out the purposes and intent of this Decree. Such obligation shall include without limitation the signing and delivery to the other party of any and all deeds, assignments, applications, papers or other instruments which

may be necessary in the opinion of the parties' counsel to carry out the terms of this Decree.

b. Petitioner shall join in the execution of such income tax return for 1977 as may, in the opinion of Respondent's accountant, be most advantageous to the parties from a tax standpoint. Respondent shall pay and hold Petitioner harmless from any income tax deficiency that may be assessed with respect to income received by the parties during 1977 or any prior year of the marriage.

c. Each party shall receive and the other shall deliver to that party all deeds, contracts and other papers, documents and records of the receiving party or which relate to properties awarded to such party hereby. Respondent shall specifically be entitled to all photos, plans and other documents relating to any vessels he may or any of the corporations now own or

has previously owned; all financial records pertaining to the corporations, and all income tax records of the parties other than those records pertaining to income earned or received by Petitioner prior to the marriage.

DONE IN OPEN COURT this 23 day of February, 1978.

/s/Jack P. Scholfield
JUDGE

Presented by:

Gerald Schucklin of
HOOF, SHUCKLIN & HARRIS

LANE, POWELL, MOSS & MILLER

By Robert J. Frederick
Robert J. Frederick of
Attorneys for Respondent

Copy Received, Approved as to Form, Notice of Presentation Waived:

FERGUSON & BURDELL

By _____
W. Wesselhoeft of
Attorneys for Petitioner

COPY RECEIVED
FEB 25 1978
FERGUSON & BURDELL

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KING COUNTY SUPERIOR
COURT CLERK
SEATTLE, WA

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

In Re the Marriage of) MARY CATHERINE HALVORSEN,) Petitioner,) and) ALBERT (BOYER) HALVORSEN,) Respondent.)	NO. D-80812 FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER having come on regularly for trial commencing December 20, 1977, and continuing thereafter through January 13, 1978; the Petitioner-Wife appearing in person and by her attorneys, William Wesselhoeft and David N. Lombard of Ferguson & Burdell; the Respondent-Husband appearing in person and by his attorneys, Robert J. Frederick of Lane, Powell, Moss & Miller and Gerald Shucklin of Hoof, Shucklin & Harris; Petitioner-Wife having instituted this action for separation and Respondent-Husband having counter petitioned for dissolution, and counsel for

Petitioner-Wife having in his opening statement stated that Petitioner-Wife will not oppose the entry of a Decree of Dissolution; the parties and their respective witnesses having given sworn testimony regarding the material facts of this dissolution proceeding; and the Court having considered said testimony, the file and exhibits herein, the argument and memoranda submitted by counsel, and having viewed the Duwamish properties of the corporations involved in this proceeding and the Bainbridge Island properties, and having rendered a transcribed oral decision, a copy of which is attached and to the extent not inconsistent with the following is incorporated herein by this reference, now makes the following:

FINDINGS OF FACT

1. Both parties were residents of the State of Washington when the Petition was filed herein.

2. More than ninety (90) days have elapsed since the Petition was filed and from the date when service of the Summons was made upon the Respondent.

3. The parties were married on May 15, 1965, at Vancouver, Washington, and the marriage was registered in Kitsap County, Washington. Petitioner had not previously been married. Respondent was previously married to Georgeanne Halvorsen on June 27, 1934. That marriage was terminated by Decree of Divorce entered on January 18, 1965, in the Kitsap County Superior Court, Cause No. 45202.

4. Two children were born as issue of Respondent's first marriage, namely a daughter, Susan, now deceased, and a son, Kent, who resides in Ketchikan, Alaska. Three children have been born as issue of this marriage who are dependent upon the parties, namely, KIRSTEN HALVORSEN, born

December 9, 1966 (age 11); MAIA HALVORSEN, born February 2, 1968 (age 9 at time of trial); and BOYER HALVORSEN, JR., born June 11, 1970 (age 7). Petitioner is not pregnant. All three of the parties' children have resided with Petitioner at the Bainbridge Island residence since the parties' separation.

5. The parties separated on october 1, 1976.

6. The marriage is irretrievably broken.

7. Petitioner was born on April 23, 1932, is presently 45 years of age and is in good health although she has a tendency toward lobar pneumonia. Respondent was born on March 15, 1905, is 72 years of age and is in good health although he has had ulcers for a number of years.

8. Petitioner has an extensive educational background which includes both bachelors and masters degrees in history

and some post-graduate schooling in librarianship. Respondent has a high school education.

9. Prior to the marriage Petitioner held various jobs, including that of historian, archivist, clerk librarian and reference librarian. During the marriage she was not engaged in gainful employment outside the home and is not so employed at the present time. She has designed a type of doll and doll dress and applied for a patent thereon. Petitioner acknowledges that she is qualified as a historian, as an archivist, as a clerk librarian and as a reference librarian. She is capable of earning an adequate living for herself.

10. Respondent has been engaged in the towing business since the early 1920's. He started with a single vessel which he operated himself, towing logs and transporting freight on Puget Sound and adjacent

waters. As the business increased, additional vessels were constructed or acquired. In 1957, he expanded the business into Southeast Alaska where he engaged in log towing, freight transportation and barge towing. The Puget Sound phase of the operation was incorporated as Halvorsen Towing, Inc., a Washington corporation ("Halvorsen Towing" herein), on April 1, 1959. The Southeast Alaska portion of the operation was incorporated as Boyer Towing, Inc., an Alaska corporation ("Boyer Towing" herein), on the same date. Respondent was designated President and a director of each corporation upon incorporation, positions which he has occupied continuously since. Because of the business need for an Interstate Commerce Commission permit, Boyer Towing was authorized to purchase all of the outstanding stock of Olson Tug Boat Company ("Olson Tug" herein). That purchase was authorized and negotiated

prior to the marriage but was consummated as of July 1, 1965. Olson Tug thereafter operated as a wholly owned subsidiary of Boyer Towing until April 1, 1976, when all of its shares were transferred to Halvorsen Towing. In the mid to late 1960's, Boyer Towing also developed a barge division which it incorporated as Boyer Alaska Barge Line, Inc., a Washington corporation ("Boyer Alaska Barge Line" herein), on April 1, 1975. Boyer Alaska Barge Line has at all times since been a wholly owned subsidiary of Boyer Towing.

11. At its incorporations, Halvorsen Towing issued 500 shares of common stock. Respondent received 498 of those shares and has owned them continuously since. Of the remaining shares, one share was issued to his son, Kent, and one share to Robert Endter, an employee and present director and officer of the company. At its incorporation, Boyer Towing issued 2,350 shares

of common stock. Respondent originally received 2,348 of those shares but owned only 1,539 shares at the time of his marriage to Petitioner. Largely as a result of gifts of stock to his children following the marriage, Respondent owned 1,460 shares of Boyer Towing at the time the parties separated. Of the remaining shares, 585 shares were in the Boyer Towing treasury, 231 shares were owned by Kent, 21 shares were owned by each of Respondent's three minor children, and 11 shares were owned by Andrew Thompson, a long-time employee and present director and officer of Boyer Towing.

12. a. Both parties seek custody of their dependent children and both are qualified as custodial parents.

b. During the year 1961, Petitioner sought and received psychiatric counseling, which included therapy and

shock treatments in June of 1961. Petitioner saw three psychiatrists through June of 1964.

c. As the children became of school age, Petitioner was critical of and dissatisfied with the school arrangements of the children and changed school arrangements often. There have been numerous conflicts between Petitioner and Respondent regarding selection of schools for their children.

d. Petitioner is an intelligent woman who is reserved in nature. She loves and is interested in the children and pays careful attention to the day-to-day details of their care. Respondent has also exhibited interest in and love for the children. Both parties participate in a number of activities with the children and generally have a good relationship with the children.

13. Respondent is a stable personality who has engaged in the same business for in excess of 50 years, establishing a respected reputation in the business community. He has a warm and close relationship with the children and is willing and able to devote all of the time and attention that would reasonably be required of him as a custodial parent.

14. All three of the parties' children are above average in intelligence. The daughter Kirsten is in an unusual amount of conflict over the issue of her living situation and is clearly unhappy and depressed. Her conflict is serious enough to warrant a period of psychotherapy. The daughter Maia is a happier child than Kirsten but is unduly self-critical and is overly concerned with approval of what she does. The two daughters are currently enrolled at the Annie Wright School in Tacoma where they reside at the school

during the school week. The son Boyer, Jr. is a very active but somewhat unhappy little boy. He is clearly missing the time with his father that they shared prior to this proceeding. The son lives with Petitioner at the family residence and commutes daily to Christ the King School in Poulsbo.

15. a. A Family Court investigation and custody recommendation was ordered by this Court. Such an investigation was conducted and resulted in a recommendation by Phyllis Patch, the Family Court social worker, that both parents were proper parents to be the custodial parent of the children but that such custody should be placed with Petitioner. That recommendation was primarily based on the fact that the children had been residing with Petitioner since the parties' separation, that she did not intend to work and therefore could spend more time with the children,

and that she would be expected to be more attentive to the day-to-day physical needs of the children. The social worker also expressed a wish to be able to recommend joint custody and testified that if Petitioner undertook part-time work, she would find it difficult to make a recommendation in this case.

b. Respondent retained the services of Dr. John G. Wallace, a qualified psychiatrist specializing in child psychiatry, to evaluate the custody issue. He consulted with both parties separately and also with the children. Dr. Wallace found both parties to be qualified as custodial parents and his recommendation was that custody be awarded to Petitioner.

16. The issue of custody is a close question primarily because there is evidence from which the Court could question the wisdom of awarding custody to Petitioner. The children will probably suffer

a certain amount of trauma and loss of security from the fact of dissolution of their parents' marriage. An award of custody of the daughters to Petitioner and of the son to Respondent involves too much risk of exposing the children to further stress. The same would be true of an award of custody to the parties jointly. The Court has carefully considered awarding custody of the children to Respondent. On balance, the Court concludes it should follow the recommendations of Dr. Wallace and Mrs. Patch and award custody of the children to Petitioner. The home environment of the children should be disturbed as little as possible so Petitioner should have the right to live in the Bainbridge Island home with the children so long as she desires to maintain her permanent and continuous residence in that home and for so long as one or more of the children are under eighteen and residing in the home.

17. a. Petitioner claims living expenses for herself and the children of $3,074.00 per month. This includes utilities, maintenance and taxes connected with the family home and the cost of private school educations and summer camps for the children. Petitioner acknowledges only $197.75 of this monthly total to be her personal living expenses. Petitioner has incurred unpaid attorneys' fees in the amount of $42,686 and costs of $19,200 through her present attorney.

b. Respondent receives a net income of $4,256.60 per month from corporate salaries and social security. He also receives a gross of $5,415.00 and a net of $2,765.00 per quarter from property rentals. The gross rentals are expected to be reduced by $1,987.50 per quarter in the event Respondent is required to relinquish one-half of the Northwoods Terminal Property. Respondent claims expenses of

$3,244.00 per month not including costs associated with establishing a new residence for himself. Respondent has incurred unpaid attorneys' fees in the amount of $46,275 and costs of $20,463 through Lane, Powell, Moss & Miller, one of his attorneys. Respondent has incurred substantial additional attorneys' fees for services rendered herein by Mr. Gerald Schucklin.

18. When the parties married, Respondent owned the following property, substantially all of which had been distributed to him under the Kitsap County Decree of Divorce pursuant to a Property Settlement Agreement entered into with his former wife on September 30, 1964 (the "Property Settlement Agreement" herein):

a. A checking account at the National Bank of Alaska containing approximately $8,200.00.

b. A checking account at the American Marine Bank on Bainbridge Island

American Marine Bank on Bainbridge Island containing approximately $24,225.00.

c. A thrift certificate in the face amount of $10,000.00.

d. A combination home and office located on 2-1/2 acres with approximately 260 feet of waterfront at Port Madison, Bainbridge Island (the "Bainbridge Residence Property" herein), and an adjacent lot consisting of approximately 92 feet of waterfront (the "Bainbridge Waterfront Lot" herein), and 10 acres of property across the road therefrom (the "Bainbridge Acreage" herein).

e. Furniture, furnishings, tools and other personal property in the then existing home on the Bainbridge Residence Property.

f. A dwelling and business headquarters comprising in excess of 800 feet of waterfront in Ketchikan, Alaska (the "Ketchikan Office Property" herein).

g. Twelve acres near Ross Point in Kitsap County, Washington, including tidelands abutting thereon and a lease from the State of Washington of first-class tidelands abutting thereon (the "Ross Point Property" herein).

h. Real property used for the storage of logs comprising uplands and tidelands on Millers Bay in Kitsap County, Washington (the "Millers Bay Property" herein).

i. 498 of the 500 outstanding shares of Halvorsen Towing assigned a value of $50,000.00 in the Property Settlement Agreement.

j. 1,539 of the 2,350 then outstanding shares of Boyer Towing assigned a value of $307,800.00 in the Property Settlement Agreement.

k. A Penn Mutual Life Insurance policy insuring Respondent's life for $4,000 which was fully paid up.

19. The properties described in paragraph 18 above were disposed of as described in this and paragraphs 20 through 26 below:

a. The funds in the National Bank of Alaska checking account were spent or transferred to the American Marine Bank checking account and the former account was closed.

b. Petitioner's name was added to the American Marine Bank checking account and it became the repository for substantially all funds received, both separate and community, and all disbursements made by the parties during the marriage.

c. The thrift certificate was liquidated in two stages with the first $5,000.00 being deposited into the American Marine Bank checking account for use in construction of the parties' new home and the second $5,000.00 being used to pay off

a loan obtained by the parties for purchase of the Duwamish Triangle Property hereinafter discussed.

20. a. The Bainbridge Residence Property was purchased by Respondent in 1942 and has been his place of permanent residence ever since. Over a period of years following 1954 he divided his time approximately equally between there and Ketchikan. He regularly maintained an office in the home then located on the property which was utilized as the principal headquarters of his corporations and from which he directed the towing business. The large commercial dock and two large floats on the waterside of the property have regularly been used over the years for the moorage, maintenance, servicing and outfitting of various tugs and barges of his corporations.

b. For many years prior to his present marriage, Respondent had intended

to replace the then existing home with a new home more suitable to his retirement needs. Toward that end, he began setting aside funds and, commencing at or shortly after the Property Settlement Agreement was negotiated, he retained an architect who designed a new home to replace the then existing one. By the time of his marriage to Petitioner, design and construction plans for the new home had been prepared and at least partially paid for, Respondent had accumulated $42,425 toward construction costs and the home was in the initial stages of construction.

c. Following the marriage, construction continued with the parties occupying the then existing home while the new home was being constructed. The new home was occupied in March of 1966 before completion and both parties resided there until September of 1976 when Respondent was required to vacate the home. Construction

of the home was nearly complete in March of 1967. Thereafter, one completion and one addition were made to the home by the parties, consisting of finishing the living room in early 1970 and the addition of a carport in early 1975. Respondent's corporations made other major additions and improvements to the Bainbridge Residence Property. These included rebuilding of the dock and floats and the paving of the existing driveway leading to the dock, office and carport.

d. The Bainbridge Residence Property is still owned by Respondent and both parties have expressed a preference to own it and live there. Petitioner acknowledges that all of the property except the new home itself constitutes the separate property of Respondent. The real estate has been stipulated to have a fair market value of $63,525, the dock and floats a fair market value of $12,712, the bulkhead

and landscaping a fair market value of $1,887, and the new home a fair market value of $87,787, for an aggregate fair market value of $171,161.

21. The Bainbridge Waterfront Lot is a 92-foot wide waterfront lot immediately adjacent to the Bainbridge Residence Property. It provides access to the business office in the new home and to the dock and moorage facilities in front thereof. Petitioner acknowledges this lot to be the separate property of Respondent. It has a stipulated fair market value of $35,500 and is still owned by Respondent.

22. The Bainbridge Acreage was improved with a storage shed and rented to Boyer Towing for the storage of engines and parts and equipment long before the parties' marriage. This acreage also contains the water supply system for the Bainbridge Residence Property which was in place substantially in its existing form

prior to the parties' marriage. The acreage is still owned by Respondent and he continues to receive rentals from Boyer Towing for its use in the amount of $90 per quarter. Petitioner acknowledges this acreage to be the separate property of Respondent, and it has a stipulated fair market value of $42,250.

23. The Ketchikan Office Property has been rented to Boyer Towing as its corporate headquarters for $250 per month payable quarterly since at least the time of Boyer Towing's incorporation in 1959. Any improvements on the property since the marriage have been made by Boyer Towing. The parties have had the personal use of the residence portions of the property from time to time on their numerous trips to Alaska. The property is still owned by Respondent, and he continues to receive $750 per quarter in rentals for it. Petitioner acknowledges the property to be

the separate property of Respondent, and it has a stipulated fair market value of $107,500.

24. The Ross Point Property is still owned by Respondent, is acknowledged by Petitioner to be the separate property of Respondent, and has a stipulated fair market value of $14,400.

25. The Millers Bay Property was rented to Seaboard Lumber as a log storage long before the parties' marriage at a monthly rental of $250 payable quarterly. In 1966, a portion of that property was exchanged to a third party for adjoining tidelands in Millers Bay and cash approximately $34,318. The cash was deposited into the parties' checking account in November of 1966 and utilized to pay for the purchase of the Children's Duwamish Property hereinafter referred to. The unexchanged portion of the Millers Bay Property and the portion acquired in the

exchange are still owned by Respondent, and he continues to receive rentals therefor but at the reduced rate of $600 per quarter. Petitioner acknowledges this property to be the separate property of Respondent, and it has a stipulated fair market value of $3,500.

26. Respondent still owns his 498 shares of Halvorsen Towing and 1,460 of his original shares of Boyer Towing. The combined stock owned by Respondent at the time of the parties' marriage had an aggregate fair market value of approximately $400,000. At the time of the parties' separation, Respondent's stock in the two corporations had increased to a fair market value between $2,500,000 and $3,350,000.

27. When the parties married, Petitioner had a savings account in the approximate amount of $4,900; 100 shares of Studebaker stock worth not more than

$1,200; a 1964 Volkswagen; chinaware, silver and crystal; and other relatively insignificant items of personal property. Those properties were disposed of during the marriage in the following manner:

a. The savings were transferred into the American Marine Bank checking account in May of 1966 and are claimed by Petitioner to have been used toward purchase of the Duwamish Triangle Property discussed below. The parties have stipulated that the property known as the Duwamish Triangle is community property and that neither party has nor claims any separate property interest therein.

b. The 100 shares of Studebaker stock were sold and the proceeds in part to purchase 100 shares of North Central Airlines stock. This stock is still owned by Petitioner, is acknowledged by Respondent to be her separate property and has an agreed fair market value of $487.50. The

remainder of the proceeds from the sale of the Studebaker stock were used to purchase 100 shares of Giant Yellow Knife stock which was in turn sold and the proceeds of $1,474 deposited into the American Marine Bank checking account in February of 1969. At the time of the deposit, the checking account contained $17,231.78. Petitioner claims the funds she deposited from sale of her stock were used to make the $13,250 down payment for purchase of the Northwoods Terminal Property discussed below. Such down payment was disbursed from the checking account on April 19, 1969. At the time of the disbursement, the checking account contained a balance of $24,586.38, including separate rentals of Respondent in amounts at least equal to the amount of any separate funds Petitioner claims to have been in the checking account at the time.

c. The 1964 Volkswagen was sold to Boyer Towing for $1,000. The proceeds were

deposited into the parties' checking account in June of 1966 and from there became so commingled with community funds that it is not possible to trace them into any property subsequently acquired by the parties. Petitioner makes no claim of any separate property interest attributable thereto.

28. Properties were acquired jointly by the parties after the marriage as follows:

a. In November of 1966, the parties purchased a tract of land in Seattle along the Duwamish Waterway just east of where it intersects with Fourth Avenue (the "Children's Duwamish Property" herein). The purchase price was paid almost entirely with separate funds of Respondent which resulted from the Millers Bay exchange described above in paragraph 25. The parties collected rentals on the property from Boyer Towing until November of 1971,

when they transferred the property into a trust for their children with the accumulations to be used for the children's education. Thereafter, the rentals have been collected by the Trustee. Boyer Towing continues to actively use the property in its barge loading and unloading operations.

b. In February of 1967, the parties purchased a triangular piece of property in Seattle along the Duwamish Waterway just east of where it intersects with Second Avenue (the "Duwamish Triangle Property" herein). That property has been and is currently used by the corporations for the parking of vehicles and equipment. It was acquired and has been held with a view to future use by the corporations. A considerable portion of the property along the Duwamish Waterway lying between the Duwamish Triangle and the Children's Duwamish Property has subsequently been purchased by Boyer Towing and is used by Respondent's

corporations primarily in connection with their barging operations. The parties have stipulated that the Duwamish Triangle has a fair market value of $18,285 and is community property with Petitioner having no separate property interest therein. The property is not currently essential to the corporations' operations nor is there any need likely to occur in the foreseeable future. Petitioner has requested the property be awarded to her so she would have waterfront property available in the event she elected to go into the water transportation business. Such request is reasonable under the circumstances. Respondent has requested the property be awarded to him for likely future expansion of the corporations.

c. In early 1969, the parties purchased a waterfront property in Ketchikan (the "Northwoods Terminal Property" herein) for the purpose of providing badly

needed loading and distribution facilities for Boyer Towing. The property was placed in use by Boyer Towing even before the purchase was consummated and rent of $1,325 per month was paid to the parties. The rental arrangement was formalized by a written lease which commenced as of September 1, 1969, and terminates on August 31, 1979, at a rental of $1,325 per month which has been paid quarterly. The lease provided that rentals would be renegotiated at the end of five (5) years and included an arbitration provision in the event the parties could not agree on a revised rental figure. No action was taken at the end of five (5) years to increase the rental payments. When purchased, the property was relatively unimproved, containing an abandoned sawmill which in its then condition was not useable as a building. Boyer Towing made and paid for substantial improvements to the building to make it

useful as a warehouse. Such improvements included the replacement of much of the underlying pilings, construction of a floor, closing in of the ends of the building, repairing the roof, painting the building, and other improvements. As so improved, the warehouse has a stipulated fair market value of $38,088. In addition to the foregoing improvements to the warehouse, Boyer Towing made and paid for other substantial improvements to the overall property. These included filling and grading; the installation of a small office building having a stipulated fair market value of $9,752; the installation of large oil storage tanks and associated concrete foundation, holding tank, walkways, piping and fence, having a stipulated fair market value of $26,882; the construction of a dock having a stipulated fair market value of $25,245; and the construction of a loading ramp having a stipulated

fair market value of $32,072. The stipulated fair market value of the land alone as filled and graded without the other improvements described above amounts to $469,812. All of the land and improvements are essential to the continued operation of Boyer Towing.

d. In May of 1974, the parties purchased a waterfront lot on Hoods Canal primarily for the purpose of providing a swimming site for their children. This lot has an agreed fair market value of $6,000. Each party has expressed a preference that the lot be awarded to the other party.

e. In December of 1966, the parties purchased properties at Hunters Bay, Sucquan Bay, and Hetta Inlet in the Prince of Wales Islands of Alaska. These three properties have stipulated fair market values of $5,000, $1,000 and $500 respectively. They are accessible only by air or

water. The Hunters Bay property in particular has been visited and utilized by the parties and their children from time to time on periodic trips to Alaska in Boyer Towing's vessel, the AIR SNIPE. Because of their inaccessibility, the properties would be of little practical use to Petititoner and would be fully accessible to Respondent through use of his corporations' vessels. The Hetta Inlet property was given to Respondent's daughter by the parties following its purchase and was reacquired by Respondent through inheritance upon her death. Respondent testified that it was not his daughter's intent in willing the property to him to deprive Petitioner of a joint interest in the property. Each party has expressed a desire to be awarded the Hunters Bay property. Both parties have expressed a desire that the Sucquan Bay property be awarded to Respondent. Respondent has expressed a desire to receive the

Hetta Inlet property and no clear preference with respect thereto has been expressed by Petitioner.

f. The parties have acquired certain furniture, furnishings and tools during the marriage which are located at the Bainbridge Residence Property and have a fair market value of $6,000.

g. The parties have accumulated savings in a savings account at the American Marine Bank in the amount of $43,418.18 plus accrued interest. Both parties have expressed a preference that these savings be divided equally.

h. In December of 1975, the parties purchased a capital note from the American Marine Bank. The note has a face amount of $10,000, pays interest at 9% per annum, and has a ten-year maturity. Both parties have expressed a preference for equal division of this note and the interest accruing thereon as and when payable.

i. In 1976, a 1973 Ford LTD owned by Boyer Towing and used by Petitioner pursuant to Court Order herein was declared as a dividend to the parties. That automobile has a stipulated fair market value of $1,700 and both parties have expressed a preference that the automobile be awarded to Petitioner. The parties have further acquired a 1958 Studebaker Golden Hawk automobile. The Court finds the fair market value of the automobile to be $1,000 on conflicting evidence.

j. There is also a Baugh sailboat purchased by the parties and used primarily by Respondent for taking the children sailing. The sailboat has a stipulated fair market value of $300.

k. The parties acquired 200 shares of Milwaukee Railroad stock which had a fair market alue of $1,358 until a recent announcement that the company had filed for

a corporate reorganization under the Federal Bankruptcy Act.

1. Respondent has certain insurance and pension benefits through his employment. These include life insurance on his life in the amount of $6,000, medical and dental insurance through the Tongass Timber Trust, and pension benefits through the Alaska Loggers Association which would have paid him $189.50 per month had he retired as of the date of separation. Both parties have expressed a preference that the Tongass Timber Trust insurance benefits and the Alaska Loggers Association pension benefits be awarded to Respondent but that upon his retirement and receipt of pension payments from the latter respondent pay Petitioner $94.75 per month from those payments as and when received.

m. The parties jointly own five unoccupied graves at the Kane Cemetary which have a stipulated fair market value

of $500. A sixth grave purchased by the parties is occupied by the remains of Respondent's daughter, Susan. Petitioner indicated a desire that each of the parties take three of the lots but indicated she has no strong feelings on the division. Respondent has indicated a desire to have the unoccupied lots for the burial of himself and the children, but has no objection to Petitioner retaining one lot for her own burial.

29. a. In addition to their joint and separate properties, the parties have accumulated savings for their children. These are presently contained in three separate savings accounts at the Poulsbo branch of Rainier National Bank where they are deposited in the name of Petitioner in trust for each of the children. Kirsten's account contains $10,881.05 plus interest; Maia's account contains $10,945.25 plus

interest; and Boyer, Jr.'s, account contains $2,765.98 plus interest. There is no current restriction on Petitioner's access to or use of these funds and she has in fact used funds from the accounts to purchase one Oriental rug for each of the children. These purchases were made by Petitioner as long-term investments in behalf of each child. She also has an expectation of unrestricted use of those funds in the future for such other investments as she deems appropriate.

b. Boyer, Jr., has 100 shares of Liggett & Meyer stock in his name, and each of the children has 21 shares of Boyer Towing stock registered in their respective names. Petitioner has sought, in her claimed capacity of representative of the children's minority stock interests in Boyer Towing, to cause the corporation to diversify into agricultural pursuits. Respondent has asked that restrictions be

placed on utilization of the savings and of the children's stock to ensure its use for the benefit of the children and that their stock in Boyer Towing not be used for the purpose of harassment of the corporation.

30. Petitioner asserts a community interest in the new home constructed on the Bainbridge Residence Property during the marriage, based upon the claim of community funds having been used in its construction. Construction costs for this home were paid from the American Marine Bank checking account. That account contained $24,225 of Respondent's separate funds at the time of the marriage, including the sum of $20,000 which had been transferred from his National Bank of Alaska checking account specifically to pay for construction of the home. Additional deposits of Respondent's separate funds and rental income were made into the account following the marriage and during the

construction period. These included a transfer of $5,000 from Respondent's National Bank of Alaska checking account in October of 1965 to pay construction costs and the liquidation and deposit in November of 1965 of $5,000 plus $232.50 interest from the $10,000 thrift certificate owned by Respondent before the marriage. Community salary and bonus checks received from his corporations during the marriage were also deposited into the account. Throughout the marriage, at least $157,500 of Respondent's separate funds or of the income from those funds were deposited into the American Marine Bank checking account. With the exception of only the months of April through June, 1966, sufficient of his separate funds were deposited into or had accumulated in the checking account each month in which expenditures were made from the account for construction of the new home to equal of substantially exceed the

amount of such expenditures. The availability of either Respondent's separate funds or of community funds in the American Marine Bank checking account during each month that expenditures were made from the account for construction of the new home was not conclusively established. The aggregate total of the expenditures made from the checking account during the marriage for construction of the home totalled $58,424.90. Petitoner admits that $26,643.93 of Respondent's separate funds were available to pay for construction of the home. She further acknowledges that, if Respondent's separate funds in the account were not charged with payments made from the account for alimony and for contributions to his daughter Susan, $37,779.06 of his separate funds were available to pay for construction of the home. The parties have used the home rent free and at little or no other personal

expense throughout the marriage. From the evidence, the court finds a reasonable likelihood that community funds were used in some amount in the construction of the home, but the evidence is not sufficient to establish the extent of the use of community funds in the construction of the home. The court will therefore find a right in the community equal to $50,000 with respect to the family home which right is an equitable right only and does not constitute an interest in the home.

31. Petitioner claims the community has a substantial interest in Respondent's stock in Boyer Towing and Halvorsen Towing on the theory that he was inadequately compensated by the corporations. The evidence indicates that Respondent was compensated a total of $35,000 in salary and bonus during 1965, $35,000 during 1966, $41,000 during 1967, $45,500 during 1968, $44,800 during 1969, $41,580 during 1970,

$53,180 during 1971, $65,864 during 1972, $68,864 during 1973, $68,864 during 1974, $71,364 during 1975, $69,684 during 1976, and $71,001 during 1977. In addition to his salary, since 1971 Boyer Towing has made monthly payments for group life, medical and dental insurance covering the parties and has made monthly contributions to a pension plan for Respondent. The corporations have also paid the heat, electricity, and telephone expenses of the parties at the Bainbridge Residence Property; have paid the homeowner's insurance covering the home; have maintained the dock, yard and home; have improved and blacktopped the driveway; have furnished the use of one or more automobiles, paying the gas, maintenance and insurance therefor; and have provided the use of the AIR SNIPE and paid a portion of the expenses associated therewith. Payments by the corporations in connection with the family

residence as aforesaid were made in lieu of rental payments for the corporations' use of the office space therein. The compensation paid to Respondent was completely adequate for the family needs. At most times during the marriage, the parties have maintained substantial checking account balances, have been adequately provided for and have maintained an above-average standard of living which has included many vacations and trips to such locations as Hawaii, Mexico, Alaska and other locations. The parties have further accumulated substantial community real estate, savings and other property during the term of their marriage and have enjoyed substantial benefits from the use of Respondent's separate funds. The compensation paid to Respondent by the corporations was a reasonable compensation, particularly when one views the overall circumstances of the corporations, the type of business they

were involved in, and the level of compensation paid chief executive officers in comparable employment situations. The community has been fully and fairly compensated for Respondent's services.

32. Petitioner claims a community interest in Respondent's stock in the corporations by virtue of the dramatic growth in value of the corporations during the marriage. The substantial increase in the value of the corporations was due primarily to the inherent qualities of the business, to the fortunately healthy economic climate generated by Alaskan statehood and the discovery of oil in Alaska, to the fact of Respondent having a well-established business and clientele in the right place at the right time when the economy burgeoned for a time, and to inflation. While Respondent's industry and skills have contributed greatly to the

success of the corporations, the community has been reasonably and fairly compensated for his services.

33. Petitioner claims a community interest in the corporations as a result of personal contributions she made to the value of the corporations by encouraging Respondent to borrow money and expand rapidly into the barge business, by assisting and advising him in personnel matters, by preparing minutes of corporate meetings, and by rendering personal services to the Olson Tugboat Company. The various activities of Petitioner in respect to assisting Respondent in the business of managing the corporations and other services claimed to have been rendered to the corporations are simply not measurable under the evidence in terms of a financial interest in the corporations or a measurable contribution to their success. The conversations on these matters are too vague to justify a

monetary award to the wife. Such services have not been shown to, nor did they result in a significant or measurable contribution to the corporations.

From the foregoing findings of Fact, the Court now makes the following:

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties to and the subject matter of this proceeding.

2. The marriage of the parties is irretrievably broken and should be dissolved.

3. Petitioner should be awarded custody of the parties' dependent children and Respondent should be awarded the most liberal and extensive visitation rights with the children consistent with practical living arrangements. Unless the parties otherwise agree, such visitation rights should include the following:

a. Alternate weekends commencing on Friday after school and ending Sunday evening at a reasonable hour to be agreed upon by the parties or, in the absence of such agreement, at 7:00 p.m. Such visitation should include any holiday that falls on a Friday or Monday of a particular visitation weekend. Respondent should have the right to pick up or to arrange to have the children picked up at their respective schools on Friday of a normal visitation weekend or Thursday of a visitation weekend where a holiday falls on Friday.

b. Alternate Thanksgiving holidays to include the long Thanksgiving weekend commencing with the 1979 Thanksgiving holiday.

c. Alternate Christmas Days (including Christmas Eves) with the Respondent having the children on Christmas Eve and Christmas Day starting with the 1978 Christmas holiday.

d. One continuous half of the children's Christmas school vacation.

e. The children's school spring vacations.

f. One continuous half of the children's summer school vacations to include specifically the Fourth of July holiday in alternate years commending with 1979. If the children attend summer camp, the time remaining when they are not in attendance at such camp should be divided equally with the Respondent's half to be continuous.

g. Such further and additional times as the children may be reasonably available or wish to visit with Respondent including particularly but not limited to those times when Respondent may be at the family home working in the office or working on one of his vessels or maintaining the grounds or working in the garden while the children are at home on days

other than during Petitioner's visitation weekends. Respondent should not initiate any activity with the children during Petitioner's normal visitation weekends but if any contact or activity develops naturally he may proceed with it. Respondent should not be entitled to exercise rights of visitation with the children under this subparagraph on Sunday of Petitioner's normal visitation weekends.

4. Petitioner should have the right to live in the family home on the Bainbridge Residence Property with the parties' children until she no longer maintains the home as her permanent and continuous residence recognizing her right to reasonable business trips and vacations or until none of the parties' children are regularly and continuously living in the home or until the eighteenth birthday of the youngest child of the parties then living, whichever first occurs. Petitioner's said

right to live in the family home should survive the death of Respondent.

a. Petitioner's occupancy and use of the home should be in a reasonable manner consistent with the manner in which it was used prior to the parties' separation. She should maintain the interior of the home, including all appliances and fixtures, in good condition and repair at her own expense, reasonable wear and tear excepted.

b. Respondent should pay all reasonable heat, electricity and local service telephone expenses of the family home, the expense of insuring the home, and all real estate taxes assessed against the Bainbridge Residence Property. He should further maintain the exterior of the family home, including plumbing and wiring services but not appliances, in reasonably good condition and repair, and should maintain

the yard and grounds comprising the Bainbridge Residence Property in a condition commensurate with that in which same was maintained prior to the parties' separation. Respondent or his designated agent should have reasonable access to the exterior of the family home and to the yard and grounds for the purpose of performing such obligations.

c. Petitioner's right to live in the family home should include the right to use the yard and grounds comprising the Bainbridge Residence Property and the driveway leading to the home in a reasonable manner commensurate with its use by herself and the children prior to the parties' separation. Such right should not include the right of access to or use of the business office in the home and she should be restrained from entering same. Respondent should cause the existing switch in the office controlling exterior flood

lights on the office end of the home to be rewired to provide Petitioner a switch thereto in the residence portions of the home.

5. Both parties should exert every reasonable effort to maintain free access and unhampered contact between the children and the other party, and to foster a feeling of affection between the children and the other party. Both parties should be responsive and sensitive to the requests and needs of the children regarding visitation and should make every effort to avoid disputes, conflict and displays of hostility toward the other in the presence of the children. In addition to any other rights of use provided in these Conclusions, Respondent should be entitled to use the Bainbridge Residence Property (other than the interior of the house) during any time he is exercising the visitation rights specified in paragraph 3 above and during

such other times as he may be exercising visitation rights with all or any of the children with the prior approval of Petitioner. Recognizing that the arrangements with respece to custody, use of the family home and visitation could produce further conflict, this Court should retain jurisdiction over this proceeding for a period of two years from entry of the Decree for the purpose of providing prompt and easy access by either party fo the Court in the event the circumstances require modification of the Decree herein. In the event the circumstances require modification of the Decree herein, either party should have the right to bring that matter on for hearing before the Court pursuant to an appropriate petition.

6. Respondent should provide support for the parties' children as follows:

a. Respondent should pay Petitioner the sum of $300 per child per month. Such

payments should be made on or before the fifth day of each month, commencing as of February 5, 1978, and should continue on or before the fifth of each month thereafter until each child reaches the age of eighteen or marries or becomes emancipated, whichever first occurs. In the event of Respondent's death prior to termination of his obligation for support under this subparagraph and Respondent has not otherwise provided for the children's support by Will, Trust or other arrangement, future support payments should be an obligation of his estate.

b. For so long as he shall be required to pay support for such child under the preceding subparagraph, Respondent should be required to maintain and name each child as recipient of all privileges extended to dependents under the existing Tongass Timber Trust Plan carried by Respondent's employer or any equivalent

policy carried by Respondent or his employer which provides coverage for medical and dental expenses. In addition, Respondent should pay all medical and dental expenses of the children which are not paid under any such policy or plan carried by Respondent or his employer. In the event of Respondent's death prior to termination of his obligation for support under this subparagraph and Respondent has not otherwise provided for the children's support by Will, Trust or other arrangement, future support payments should be an obligation of his estate.

c. Respondent should pay directly to the school involved, one-half of the reasonable cost of private education of the children over and above the ordinary costs that would be incurred by such children attending public school. This should apply to any reasonable expense incurred because the children are attending private schools

or because they are attending such schools away from home, or incurring costs attending schools beyond the high school level for a period of five school years past high school which costs Respondent has not otherwise made provision for by Trust, Will or other arrangement. Respondent should not be obligated for the children's school clothing.

d. Respondent should pay directly to the camp involved the tuition, room and board and all actual and necessary camp related expenses furnished and billed by the camp for two weeks of summer camp for all or any of the children, together with that proportion of necessary air or bus transportation expenses to and from the camp which two weeks bears to the total time attended by the child.

7. The family home on the Bainbridge Residence Property because constituting an improvement to Respondent's

separate property and having been built primarily with Respondent's separate funds, constitutes the separate property of Respondent. The marital community has a colorable claim of interest in the family home, although the evidence is not sufficient to make a finding that it has a clearly established interest. Petitioner should nevertheless be awarded the sum of $25,000 representing an equitable award resulting from a recognition by the Court of at least the possibility that the marital community made substantial contributions to the cost of its construction. Such sum should be paid to Petitioner within thirty days after entry of the final Decree herein.

8. The community's interest in the Northwoods Terminal Property is limited to the real estate which should be considered community property for purposes of this proceeding. Petitioner has failed to

establish a separate property claim or interest in the Northwoods Terminal Property entitling her to a greater ownership interest therein than Respondent. She has also failed to establish any legal or equitable basis for compensating her or the community for improvements to the property made and paid for by Boyer Towing. Those improvements have not reverted to the community and there is no indication that such a reversion will take place in the foreseeable future.

9. The compensation paid to Respondent by his corporations during the marriage was reasonable compensation. Petitioner has failed to establish that Respondent's compensation was so clearly deficient that it produced an obvious inequity to the community giving rise to an interest in or claim against Respondent's stock. Mere increases in the value of the separate property of one party during the

marriage does not establish nor require that the marital community be found to have an interest in or claim against that separate property. Petitioner has failed to establish that the personal services rendered by her in connection with Respondent's corporations were of such nature or value as would entitle her to a financial interest in Respondent's corporations or justify a monetary award to her significantly increasing the property division made by this Court. The stock of respondent in Boyer Towing and Halvorsen Towing is his separate property and Petitioner has failed to establish that the marital community is entitled to an interest in or claim against that stock, and has failed to establish the value of any such interest or claim.

10. Petitioner should be awarded the following property as her sole and separate

property which should be in addition to the award provided in paragraph 7 above:

a. Her separate property consisting of 100 shares of North Central Airlines common stock; minor furnishings in the home; silverware, chinaware and crystal in the home; patent rights to a doll under a design patent applied for in December of 1976; and her personal checking and savings accounts established following the parties' separation.

b. An undivided one-half interest in the real estate included in the Northwoods Terminal Property subject to the following option in favor of Boyer Towing or in favor of Respondent in the event Boyer Towing fails to exercise same:

i. Either Boyer Towing or Respondent should have the option to elect on or before July 30, 1979, to pay Petitioner the sum of $234,906 for her interest in the Northwoods Terminal Property and to enter

into an agreement setting forth the basis on which such sum will be paid to her. Until that election is made and such written agreement entered into, Petitioner should be entitled to receive one-half of the rental income payable by Boyer Towing for use of the Northwoods Terminal Property commencing March 1, 1978. Petitioner should have no right during the option period to seek or insist upon an increase in existing rentals paid by Boyer Towing for use of the property.

ii. In the event either Boyer Towing or Respondent elects to pay Petitioner $234,906 for her interest in the Northwoods Terminal Property within the time provided above, such sum should either be paid in full or, unless otherwise agreed, an agreement entered into to pay such sum in equally spaced installments of not less than $58,726.50 in principal commencing with the date of exercise.

Under such agreement, payment of the unpaid balance including interest should be made within two years after the date on which the option is effectively exercised. Interest at 6% per annum should be paid on the deferred principal balances commencing from the date of exercise of the option.

iii. In the event Boyer Towing or Respondent does not elect to pay Petitioner $234,906 for her interest in the Northwoods Terminal Property and enter into such written agreement by the end of business hours on July 30, 1979, Petitioner should remain a joint owner of the Northwoods Terminal Property with Respondent and said option to acquire her interest therein should terminate.

c. The Duwamish Triangle Property.

d. One-half of the principal and interest accumulated in the American Marine Bank savings account.

e. One-half of the principal and

interest under the American Marine Bank capital note as and when paid.

f. The sum of $94.75 per month from the Alaska Logger's Association pension payments as and when same are paid and received by Respondent.

g. The 1973 Ford LTD automobile and the 1958 Studebaker Golden Hawk Automobile.

h. All social security benefits accrued or to which she may be entitled by reason of her employment prior to the parties' marriage.

i. One of the five unoccupied cemetary plots at the Kane Cemetary.

j. One hundred shares of the Milwaukee Railroad common stock.

k. One-half of the community furniture and rugs as provided in paragraph 11.b. hereafter.

l. The sum of $50,000 which represents a recognition by the Court of the

disparity between the financial circumstances of the Petitioner and the financial circumstances of the Respondent and constitutes an award to ensure a just and equitable distribution of property to Petitioner. Such sum shall be payable in cash within twelve months after entry of the final Decree and shall draw interest at the rate of 8% per annum from the date of the Decree until paid in full.

11. Respondent should be awarded the following property as his sole and separate property:

a. The Bainbridge Residence Property subject to the restrictions and obligations specified hereinafter and in paragraph 4 above. Respondent should have the right to unrestricted and exclusive use of the business office in the family home and the right to unrestricted but reasonable use of and access to the garage adjacent to the office, the parking area in

front of the office, the dock and floats, the detached garage and the garden area to the rear of the Bainbridge Residence Property. He should further have the right to make reasonable use of the yard and grounds comprising the Bainbridge Residence Property only in connection with his maintenance obligations, planting and maintaining of a vegetable garden in its present size and location, use of the detached garage and the boats located therein, and after a period of twelve months following entry of the Decree herein, or, if appealed, after a final decision following such appeal, he may construct or place a residence on the property in a location reasonably removed from the family home. Respondent's use of the Bainbridge Residence Property should be exercised in such a manner that it would not unreasonably interfere or conflict with

reasonable activities of Petitioner in her occupancy and use of the property.

b. One-half of the community furniture and rugs (to specifically include the large Oriental rug currently in the living room) and all of the community furnishings, appliances, tools and other personal property in the family home subject to the right of Petitioner to have the reasonable use thereof for so long as she continues to occupy the family home. When Petitioner no longer occupies the family home, the community furniture and rugs other than the large Oriental rug should be divided equally with Petitioner receiving a credit in the division equal to one-half of the value of such rug.

c. All other separate property of Respondent including the Bainbridge Waterfront Lot, the Bainbridge Acreage, The Ross Point Property; the Millers Bay Property; the Ketchikan Office Property;

certain furniture, furnishings and personal property located in the family home or on the Bainbridge Residence Property; the Pennsylvania Mutual Life Insurance policy; the 498 shares of common stock in Halvorsen Towing; and the 1,460 shares of common stock in Boyer Towing.

d. The Hunters Bay, Sucquan Bay and Hetta Inlet Properties.

e. The Hoods Canal lot.

f. The one occupied and the four contiguous unoccupied cemetery lots at Kane Cemetery.

g. The Tongass Timber Trust group life, medical and dental insurance.

h. The Alaska Loggers Association pension subject to the obligation to pay Petitioner the sum of $94.75 per month as and when monthly pension benefits are received by him upon his retirement.

i. The Baugh sailboat subject to the obligation that he retain it at the

Bainbridge Residence Property and that it be used primarily for the benefit of the children.

j. One-half of the principal and interest accumulated in the American Marine Bank joint savings account.

k. One-half of the principal and interest payable under the American Marine Bank capital note as and when paid.

l. One hundred shares of Milwaukee Railroad stock.

m. The sum of $4,092.50 representing one-half of the differential in values between certain community properties awarded to Petitioner and those awarded to Respondent. Said sum may be offset against any monetary obligation Respondent owes Petitioner hereunder other than child support and the $25,000 described in paragraph 7 above.

n. All social security benefits accrued or to which he may be entitled

by reason of his present and all past employments.

o. All bank accounts on which his name appears as an authorized signator other than the joint savings account of the parties at the American Marine Bank.

12. Each party should be enjoined from disposing of or otherwise utilizing any of the savings, stock or other investments held in the name of or for the benefit of the parties' children without the prior consent of the other party or Order of this Court.

13. Respondent should be required to pay and hold Petitioner harmless from any unpaid medical or dental expenses incurred for the parties' children during the separation of the parties and prior to trial herein. Each party should pay and hold the other harmless from all other debts and obligations incurred by such

party regardless of when incurred. Respondent should pay directly or through indemnity one-half of the actual capital gains tax liability incurred by Petitioner as a result of exercise of the option and purchase of her interest in the Northwoods Terminal Property as contemplated by paragraph 10.b. of these Conclusions.

14. In view of the substantial property being awarded to Petitioner; her health, education and capability of earning an adequate living for herself; the financial obligations of Respondent; and the provisions made for occupancy of the family home and payment of other expenses of Petitioner and the children, Petitioner has not demonstrated a need for and no maintenance should be awarded in this proceeding.

15. In view of the substantial property being distributed to Petitioner and the other monetary awards provided her

herein, Petitioner is capable of paying her attorneys' fees and costs without undue hardship. There should be no further award of attorneys' fees and costs without undue hardship. There should be no further award of attorneys' fees or costs to Petitioner herein.

DONE IN OPEN COURT this 23rd day of February, 1978.

/s/
JUDGE

Presented by:

Gerald Shucklin of
HOOF, SHUCKLIN & HARRIS

LANE, POWELL, MOSS & MILLER

By /s/
Robert J. Frederick of
Attorneys for Respondent

Copy received, Approved as to Form, Notice of Presentation Waived:

FERGUSON & BURDELL

By _____
W. Wesselhoeft of
Attorneys for Petitioner

APPENDIX B

IN THE COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

In re the Marriage of MARY CATHERINE HALVORSEN, Appellant, and ALBERT (BOYER) HALVORSEN, Respondent.	Court of Appeals No. 7841-1 I Supreme Court of the State of Washington No. 47319-6 NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT

Mary Catherine Halvorsen, appellant in the above-captioned case, gives notice of appeal to the United States Supreme Court by intent to file "Petition for Certiorari" from the decision filed in the Court of Appeals on July 14, 1980. A motion for reconsideration was filed on August 4, 1980 and denied on August 14, 1980.

A petition for discretionary review by the Washington State Supreme Court was filed on September 10, 1980 and denied on November 7, 1980.

/s/
Mary Catherine Halvorsen
Acting Pro Se
8324 N.E. Hidden Cove Rd.
Bainbridge Island, WA 98110
Telephone: (206) 842-5439

No. A-634

MARY CATHERINE HALVORSEN,

Petitioner,

v.

ALBERT (BOYER) HALVORSEN

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of petitioner, IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 6, 1981.

/s/ Rehnquist, J.
Associate Justice of the
Supreme Court of the
United States

Dated this 23rd
day of January, 1981

APPENDIX C

Fourteenth Amendment to the United States Constitution

All persons born or naturalized in the United States, are subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Act of the United States Congress of January 31, 1928 c. 14, No. 1, 45 Stat. 54, Section 1:

The writ of error in cases civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal.

Section 2:

That in all cases where an appeal may be taken as of right, it shall be taken by serving upon the adverse party or his attorney of record, and by filing in the office of the clerk, with whom the order appealed from is entered, a written notice, to the effect that the appellant appeals from the judgment or order or from a specified part thereof: Provided, however, that the review of judgments of State Courts of last resort shall be petitioned for and allowed in the same form as now provided by law for writs of error to such courts.

Act of Congress of June 25, 1948 c. 646, 62 Stat. 992, Section 39:

The following laws are hereby repealed. Any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal. 45 Stat. 54, Sec. 1.

28 USC 1651 Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 USC 1257 State Courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties

or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

APPENDIX D

RCW 4.04.010 Extent to which common law prevails. The common law, so far as it is not inconsistent with the Constitution and laws of the United States, or of the state of Washington nor incompatible with the institutions and condition of society in this state, shall be the rule of decision in all the courts of this state. Enacted 1891, ch. 17, No. 1, P. 31, based upon territorial laws of 1862, p. 83, No. 1, and 1877, p. 3, No. 1.

RCW 5.24.010 Judicial notice of Constitution and laws. Every court of this state shall take judicial notice of the Constitution, common law, civil law, and statutes of every state, territory and other jurisdiction of the United States (1941, ch. 82, No. 1; Rem. Supp. 1941, No. 1278).

RCW 26.09.030 Petition for dissolution of marriage - Court proceedings, findings - transfer to family court - Legal separation in lieu of dissolution

When a party who is a resident of this state or who is a member of the armed forces and is stationed in this state, petitions for a dissolution of marriage, and alleges that the marriage is irretrievably broken and when ninety days have elapsed since the petition was filed and from the date when service of summons was made upon the respondent or the first publication of summons was made, the court shall proceed as follows:

1. If the other party joins in the petition or does not deny that the marriage is irretrievably broken, the court shall enter a decree of dissolution.

2. If the other party alleges that the petitioner was induced to file the petition by fraud, or coercion, the court shall make a finding as to that allegation and, if it so finds, shall dismiss the petition.

3. If the other party denies that the marriage is irretrievably broken the court shall consider all relevant factors, including the circumstances that give rise to the filing of the petition and the prospects for reconciliation and shall:

a. Make a finding that the marriage is irretrievably broken and enter a decree of dissolution of the marriage; or

b. At the request of either party or on its own motion, transfer the cause to the family court, refer them to another counseling service of their choice, and request a report back from the counseling service within sixty days, or continue the matter for not more than sixty days for hearing. If the cause is returned from the family court or at the adjourned hearing, the court shall:

i. Find that the parties have agreed to reconciliation and dismiss the petition; or

ii. Find that the parties have not been reconciled, and that either party continues to allege that the marriage is irretrievably broken. When such facts are found, the court shall enter a decree of dissolution of the marriage.

4. If the petitioner requests the court to decree legal separation in lieu of dissolution, the court shall enter the decree in that form unless the other party objects and petitions for a decree of dissolution or declaration of invalidity. (Enacted Laws 1st Ex Sess 1973 ch 157 No. 3)

RCW 26.09.080 Disposition of property and liabilities - Factors

In a proceeding for dissolution of the marriage, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage by a court which

lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall, without regard to marital misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including but not limited to:

1. The nature and extent of the community property;

2. The nature and extent of the separate property;

3. The duration of the marriage; and

4. The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse having custody or any

children. (Enacted Laws 1st Ex Sess 1973, ch. 157, No. 8)

RCW 26.09.090 Maintenance order for either spouse - Factors.

1. In a proceeding for dissolution of marriage, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, after considering all relevant factors, including but not limited to:

a. The financial resources of the party seeking maintenance, including separate or community property apportioned to him, and his ability to meet his needs

independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

b. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his skill, interests, style of life, and other attendant circumstances;

c. The standard of living established during the marriage;

d. The duration of the marriage;

e. The age, physical and emotional condition, and financial obligations of the spouse seeking maintenance, and

f. The ability of the spouse from whom maintenance is sought to meet the needs and financial obligations while meeting those of the spouse seeking maintenance.

26.09.100 Child support - Apportionment of expense

In a proceeding for dissolution of marriage, legal separation, declaration of invalidity, maintenance, or child support, after considering all relevant factors but without regard to marital misconduct, the Court may order either or both parents owing a duty of support to any child of the marriage dependent upon either or both spouses to pay an amount reasonable or necessary for his support.

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NO. 80-1511

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

In re MARY CATHERINE HALVORSEN,
Petitioner.

ON PETITION FOR A WRIT OF MANDAMUS OR IN THE ALTERNATIVE, A WRIT OF CERTIORARI TO THE COURT OF APPEALS, DIVISION I, STATE OF WASHINGTON, JUDGES JAMES, DURHAM AND RINGOLD

BRIEF FOR RESPONDENT ALBERT (BOYER) HALVORSEN IN OPPOSITION

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OPINIONS OF COURTS BELOW

The King County Superior Court at Seattle, Washington, entered Findings of Fact and Conclusions of Law, and a Decree of Dissolution of Marriage on February 23, 1978 (Cause No. D-80812) (Pet. App. A-16). The Court of Appeals of Washington, Division I, entered its unreported opinion on July 14, 1980 (Case No. 7841-1-I) (Pet. App. A-1). The Supreme Court of Washington denied petitioner's petition for review on November 7, 1980 (Case No. 47319-6).

STATEMENT OF THE CASE

This is a divorce case. During the trial petitioner raised no constitutional issue or other federal question. The trial court entered a Decree of Dissolution of Marriage (Pet. App. A-16) in which provisions were made for child custody and visitation, support of the children entitled to support, and the disposition of

the property and liabilities of the parties. As required by Wash. Rev. Code § 26.09.080, the court endeavored to make a property disposition as appeared just and equitable considering all relevant factors, including (1) the nature and extent of the community property; (2) the nature and extent of the separate property; (3) the duration of the marriage; and (4) the economic circumstances of each spouse at the time the division of property was to become effective.

Respondent thereafter appealed the matter, challenging the trial court's disposition of property, its award of child support and its failure to award petitioner maintenance or the amount of attorneys' fees and costs which she sought. The assignments of error set forth in petitioner's brief on appeal raised no constitutional issues or other federal questions,

and none were decided or considered by the appellate court in its opinion. (Pet. App. A-1.)

ARGUMENT

A. Petitioner Has Failed to Demonstrate the Existence of Circumstances Justifying the Issuance of a Writ of Mandamus Under 28 U.S.C. § 1651

It is well-established that the writs authorized by 28 U.S.C. § 1651 are drastic and extraordinary remedies to be reserved for extraordinary causes in which appeal is clearly an inadequate remedy. Kerr v. United States District Court, 426 U.S. 394 (1976); Will v. United States, 389 U.S. 90 (1967). See also, Rules of the Supreme Court, Rule 26.

Petitioner has failed to demonstrate the existence of such special circumstances here, or to show why adequate relief cannot be obtained by other means.

B. This Court Is Without Jurisdiction Under 28 U.S.C. § 1257(3)

It is essential to the jurisdiction of the Court under 28 U.S.C. § 1257(3) that the record affirmatively show that a federal question was presented for decision to the highest court of the state having jurisdiction, and that its decision of the federal question was necessary to the determination of the cause. Lynch v. New York, 293 U.S. 52 (1934); Honeyman v. Hanan, 300 U.S. 14 (1937).

No constitutional issue or other federal question was raised either in the trial or appellate courts in this case.

CONCLUSION

The Petition should be denied.

DATE: April 3, 1981.

Respectfully submitted,

LANE, POWELL, MOSS & MILLER
By: ROBERT J. FREDERICK
Attorneys for Respondent

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NO. 80-1511

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

MARY CATHERINE HALVORSEN,
Petitioner,

v.

ALBERT (BOYER) HALVORSEN,
Respondent.

ON PETITION FOR A WRIT OF MANDAMUS OR IN THE ALTERNATIVE, A WRIT OF CERTIORARI TO THE COURT OF APPEALS, DIVISION I, STATE OF WASHINGTON, JUDGES JAMES, DURHAM AND RINGOLD

REBUTTAL BRIEF OF PETITIONER

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REBUTTAL BRIEF OF PETITIONER

REBUTTAL TO STATEMENT OF THE CASE

Respondent's brief states "This is a divorce case". It sounds as if he is saying divorce cases have no constitutional rights; that the United States Constitution is in suspension whan a divorce case is decided; and that divorce cases, irregardless of flagrant violation of the law, are untouchable. This simply confirms that

there is no protection under the "No-Fault" divorce laws of the State of Washington.

The Constitution of the United States is in effect at all times. The due process clause and the equal protection clause of the Fourteenth Amendment do not contain any exceptions; divorce actions are not exempt. It is the "No-Fault" divorce laws that deny the rights of the Fourteenth Amendment to the United States Constitution to the residents of the State of Washington.

Federal questions were raised at the appellate level in accordance with Washington State Rules of Appellate Procedure, RAP 2.5 which allows the raising of a federal question for the first time at the appellate level. Petitioner's BRIEF on appeal before Division I, Court of Appeals, State of Washington on pp. 8, 9, and 10 arguing about the Alaska property states:

> instead without jurisdiction and in violation of the Constitution

> of the State of Washington (Amendment 9, Art. I, Sec. 16, and Art. I. Sec. 3) and of the 14th Amendment of the United States Constitution partitioned that land in a marriage dissolution . . . thereby taking private property from the Appellant . . . in violation of due process of law.
>
> The court was in error when without jurisdiction it prohibited the Appellant from asserting her right to collect such increase for rental adjustment and awarding them to Boyer Towing, Inc. or the Respondent together with the option . . . contrary to due process of the 14th Amendment of the United States Constitution.

(Emphasis added.) The equal protection issue was raised on p. 10 of appellant's brief through the fair, just and equitable question:

> each was entitled to make a fair, just and equitable distribution of all the community and separate property.

Petitioner's PETITION FOR DISCRETIONARY REVIEW to the Washington State Supreme Court, brought to the attention of that Court that the Court of Appeals did not

address the issues of fact and issues of law. The Petition on pp. 16, 17, and 18 further states:

> The Court of Appeals . . . failed to rule on the voidness of the trial jurisdiction as being a violation of the rights or property of that real property . . . established and subject to the jurisdiction of Alaska law as guaranteed by the Fourteenth Amendment and prohibited from changing those rights. . . . Such issue of law was presented to the Court of Appeals to review in the appeal.
>
> A substantial question of importance for the Court to decide is . . . a fair, just and equitable distribution of those assets acquired during marriage between the parties on dissolution of that marriage.

Thus the federal questions were raised at the appellate level which is allowable under Washington Appellate Rules. The failure of the Court of Appeals to address the issues of fact and issues of law was raised to the Washington Supreme Court, which court declined to act.

REBUTTAL ARGUMENT

In respondent's brief, Honeyman v. Hanan, 300 U.S. 14 (1937) is cited as saying that the record must show that a federal question was presented. Honeyman further states: "Whether these requirements have been met is itself a federal question".

> In deciding whether it has jurisdiction this Court must determine whether a federal question was necessarily decided by the state court; the determination must rest upon an examination of the record; and while a certificate or statement by the state court that a federal question has been presented to it and necessarily passed upon may aid this Court in such examination of the record, it cannot avail to foreclose the inquiry or to import a federal question into the record.

The next case cited, Lynch v. New York, 293 U.S. 52 (1934), is a case where other remedies were available under local law of the State of New York. These remedies are not available in the State of Washington, thus rendering this case, and

the two following cases cited in respondent's brief, inapplicable to my case.

Respondent's brief next cites Will, U.S. District Judge v. United States, 389 U.S. 90 (1967). It is a criminal case involving the issuance of a Writ of Mandamus before the trial court had rendered its decision. This is not the case here. Here the trial court has rendered its decision; the court of appeals did not comply with State law and answer the issues of law and fact raised on appeal including federal rights of due process and equal protection. The State Supreme Court declined any further action. No further State remedy is available. In the Will case the trial court had not rendered an opinion, thus causing the court of appeals to act prematurely.

Kerr v. United States, 426 U.S. 394 (1975), another criminal case, is

similar to the Lynch case in that there were other adequate alternatives. My case does not have any such alternatives; no further relief is available; therefore, my case is properly before the Court's jurisdiction.

REBUTTAL CONCLUSION

The Petition should be granted.

Respectfully submitted,

MARY CATHERINE HALVORSEN
Pro Se

Mary Catherine Halvorsen